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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 603)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 178

UEBERSEE FINANZ-KORPORATION, A. G.,
PETITIONER,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL AND AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JULY 7, 1951.

CERTIORARI GRANTED OCTOBER 15, 1951.

No. 178

JOINT APPENDIX

Office-Supreme Court, U. S.
FILED
JUL 7 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,464

UEBERSEE FINANZ-KORPORATION, A. G.,
Appellant,

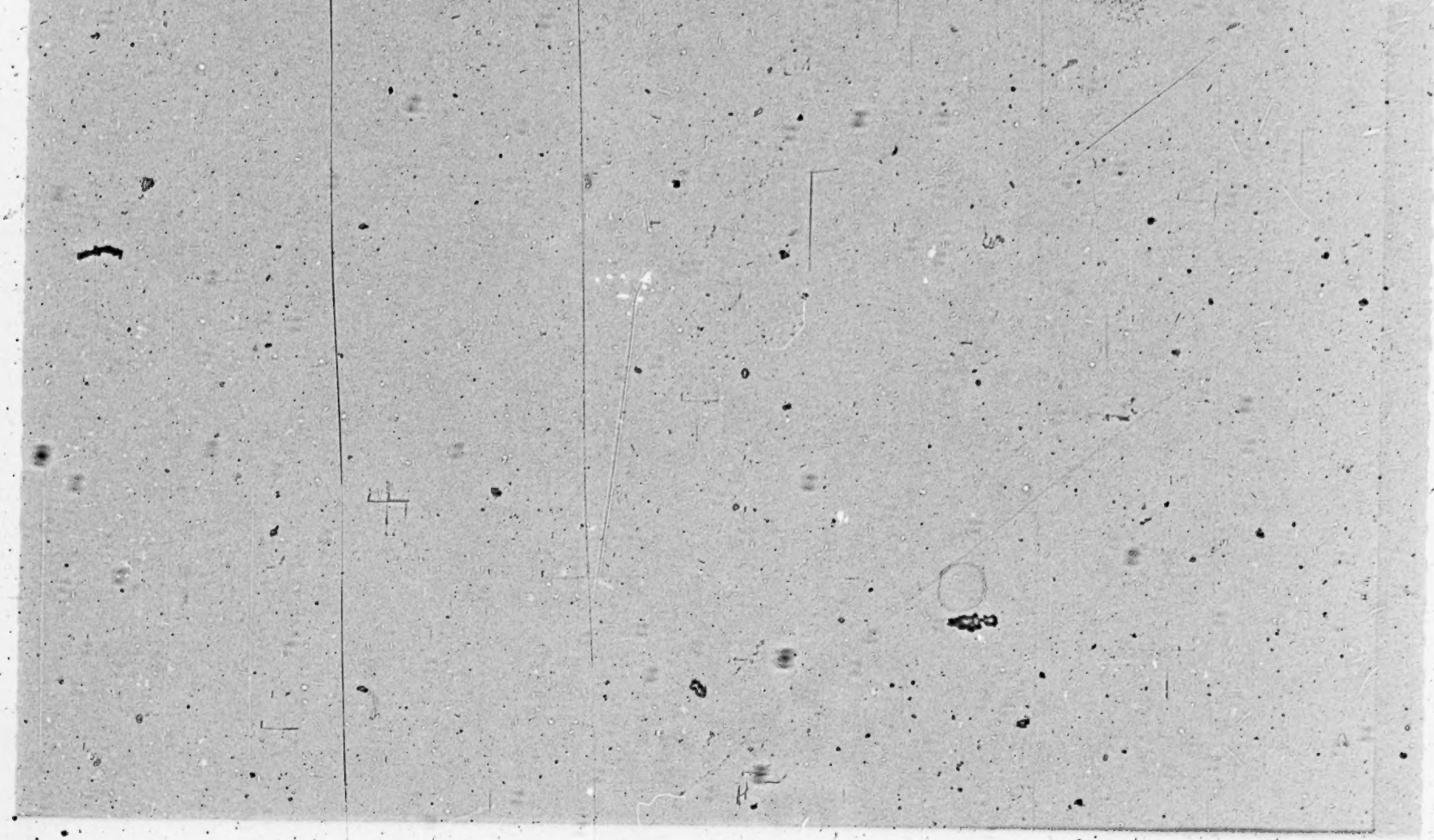
—against—

J. HOWARD McGRATH, Attorney General and as successor to the Alien Property Custodian,
Appellee.

Appeal from the District Court of the United States for the District of Columbia

United States Court of Appeals
For the
District of Columbia Circuit
FILED FEB 25 1950
Joseph W. Stewart
CLERK

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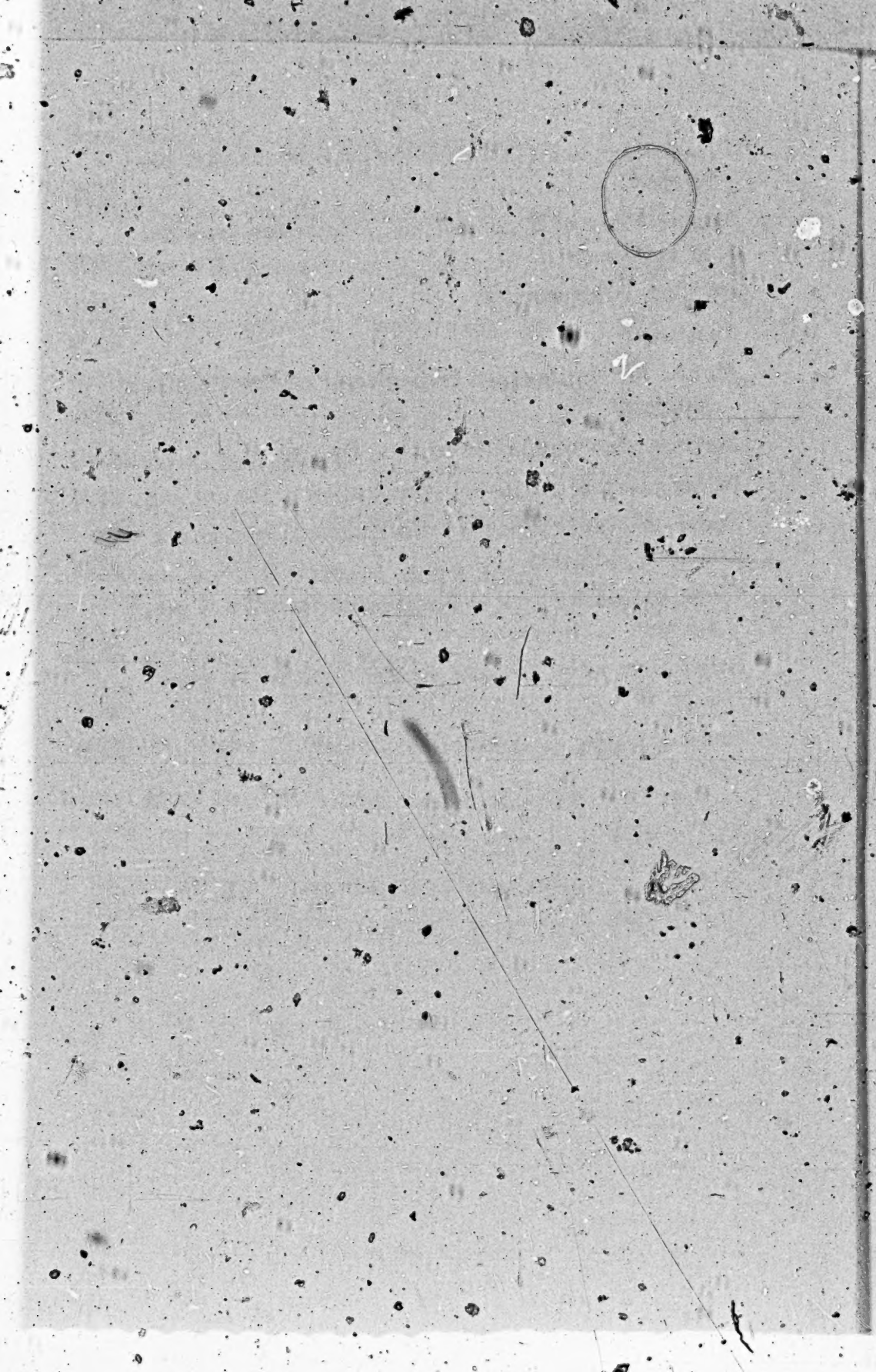
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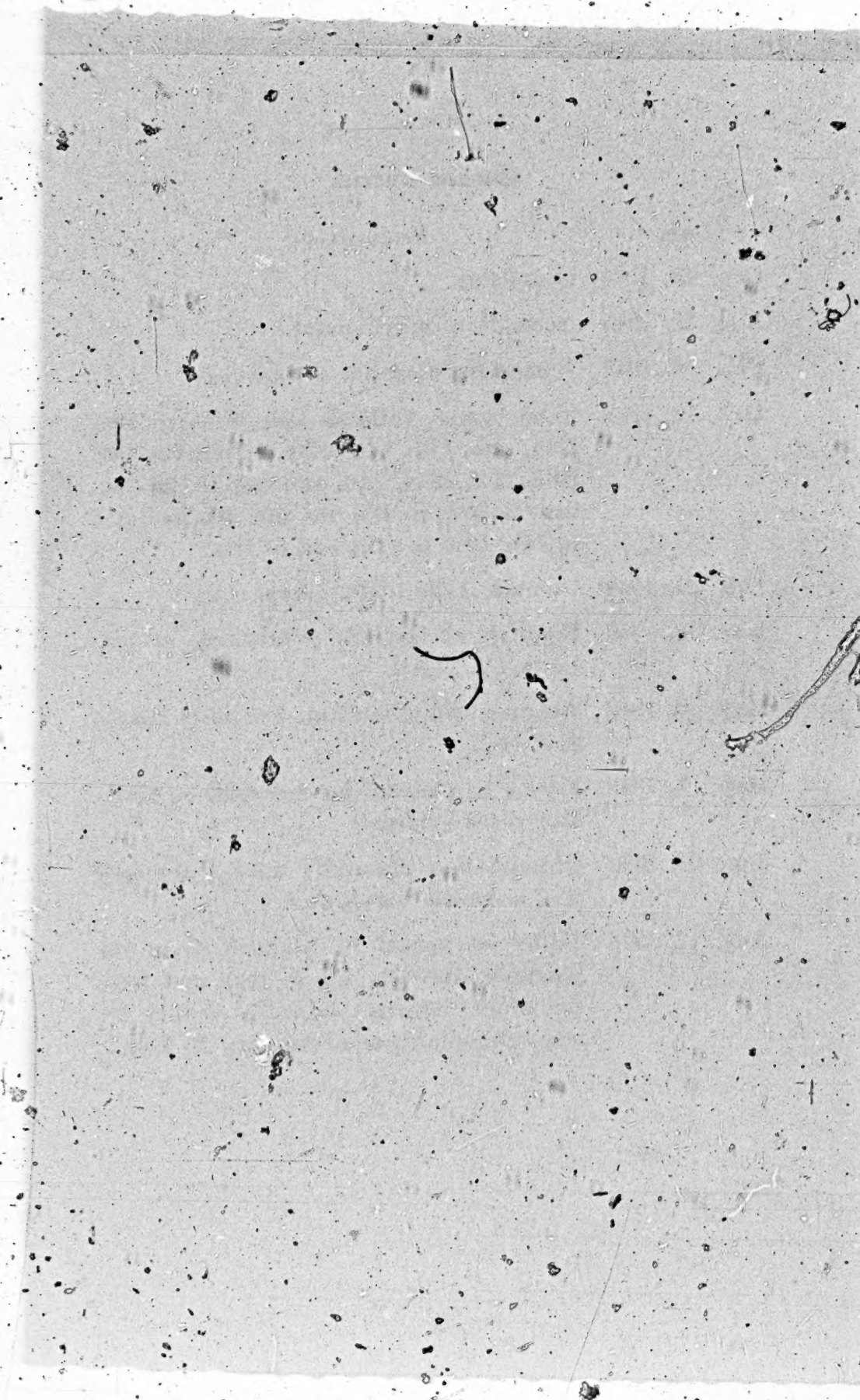
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Docket Entries

Date	*Proceedings*
Oct. 25, 1944	Complaint.
Aug. 20, 1945	Amendment to complaint.
Feb. 6, 1948	Answer to complaint as amended.
Dec. 8, 1948	Trial begins, through Dec. 9-10; to Dec. 13th, 14th, 15th, 16th, 17th, respited to Dec. 20th, 21st, 22nd, 23rd and respited to January 3, 1949 to 4th, 5th, 6th, 7th, respited to Jan. 10th to 11th, end of trial.
Feb. 21, 1949	Opinion of the court. Laws, *C. J.*
May 6, 1949	Findings of fact and conclusions of law. Laws, *C. J.* (N).
May 6, 1949	Judgment for defendant. For costs. Laws, *C. J.* (N).
May 5, 1949	Motion by plaintiff for new trial on newly discovered evidence.
June 21, 1949	Ordered that plaintiff's motion for new trial is denied. Laws, *C. J.*
Aug. 12, 1949	Notice of appeal by plaintiff from the judgment entered May 5, 1949 and from the order denying plaintiff's motion for new trial entered as of January 21, 1949.



3270 In the United States District Court for the District of Columbia

Civil Action No. 26453

UEBERSEE FINANZ-KORPORATION; A. G. LIESTAL, SWITZERLAND,

Plaintiff,

—v.—

JAMES K. MARKHAM, AS ALIEN PROPERTY CUSTODIAN,

Defendant.

Complaint

Filed Oct. 25, 1944

Plaintiff by its attorneys, complaining of the defendant, alleges:

1. This action arises under the Fifth Amendment to the Constitution of the United States and the Trading With The Enemy Act, Act of October 6, 1917, 40 Stat. 411, as amended; U. S. C. Title 50, Appendix Sections 1 to 31, inclusive, as hereinafter more fully appears.

2. The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.

3. Plaintiff is a corporation organized in the year 1922 under the laws of the Confederation of Switzerland, has its principal office at Liestal, Switzerland, and is and always has been a citizen of Switzerland.

4. Plaintiff is not, nor at any of the times herein specified has been, an enemy or ally of enemy of the United

States within the meaning of the Trading With The Enemy Act.

5. Plaintiff is not, nor at any of the times herein specified has been, a national of a designated enemy country.

6. On and prior to June 4, 1942, and continuously thereafter, plaintiff was and is the lawful owner of the following property:

(a) 345,760 shares of the common stock of Harvard Brewing Company (a Delaware Corporation), and all dividends thereon since June 14th, 1942. (Described in Custodian's Vesting Order No. 17, dated June 14, 1942.)

(b) 73,039 shares of the common stock of Spur Distributing Company, Inc. (a Delaware Corporation), and all dividends thereon since June 14, 1942. (Described in Custodian's Vesting Order No. 14, dated June 14, 1942.)

(c) 100 shares of the common stock of Westminster Industrial Corporation (a New York Corporation), and all dividends paid thereon since June 14, 1942. (Described in Custodian's Vesting Order No. 18, dated June 4, 1942.)

3271 (d) 7,304 shares of the common stock of Ajax Transportation Company (a Missouri corporation), and all dividends thereon since June 30, 1942. (Described in Custodian's Vesting Order No. 36, dated June 30, 1942.)

(e) All right, title and interest of Uebersee Finanz-Korporation, A. G., (Overseas Finance Corporation, Limited), in and to that certain contract executed under the date of October 18, 1940 with Amerlagene, Inc., a Delaware corporation.

All income, profits and other property heretofore accrued or which may hereafter accrue to Uebersee Finanz-Kor-

poration, A. G. (Overseas Finance Corporation, Limited), by virtue of the aforesaid contract dated October 18, 1940. (Described in Custodian's Vesting Order No. 51, dated July 11, 1942.)

(f) 300 shares of the common stock of Amerlagene, Inc. (a Delaware corporation), and all dividends thereon since June 4, 1942. (Described in Custodian's Vesting Order No. 19, dated June 4, 1942.)

7. On the following dates Leo T. Crowley, the predecessor in office of the defendant, caused to be executed the following numbered Vesting Orders respecting the property described in the indicated sub-sections of Paragraph 6, above:

Date	Vesting order No.	Description
6-14-42	17	See Paragraph 6 (a).
6-14-42	14	See Paragraph 6 (b).
6-4-42	18	See Paragraph 6 (c).
6-30-42	36	See Paragraph 6 (d).
7-11-42	51	See Paragraph 6 (e).
6-4-42	19	See Paragraph 6 (f).

8. Thereafter, in purported pursuance of said Vesting Orders the said Leo T. Crowley, without warrant of law and in violation of the Constitution of the United States, seized the property described in Paragraph 6 above, without the consent of the plaintiff.

9. At no time, at or since the dates mentioned in Paragraphs 7 and 8 above, has any of the property described in Paragraph 6 above, been owned, directly or indirectly, in whole or in part, by any person who was or is an enemy or ally of enemy within the meaning of the Trading With The Enemy Act.

10. At no time, at or since the date, mentioned in Paragraphs 7 and 8 above, has any of the property described in Paragraph 6 above, been owned, directly or indirectly, in whole or in part, by any person who was or is a national of a designated enemy country.

11. On May 27, 1943 plaintiff duly made and filed in triplicate with the defendant, a Notice of Claim with respect to the property described in Paragraph 6 above, in the form and containing the particulars required by the Alien Property Custodian.

12. Defendant and his predecessor have retained and defendant is now retaining the property described in Paragraph 6 hereof, without warrant of law and in violation of the Constitution of the United States.

Wherefore plaintiff demands:

(a) Judgment that it is entitled to the immediate possession of the property described in Paragraph 6 hereof.

(b) That a decree be entered directing the defendant to account for and deliver and transfer to plaintiff the property described in Paragraph 6 hereof, together with all dividends and avails thereof and all right, title and interest therein.

(c) Judgment for the costs of this action.

UEBERSEE FINANZ-KORPORATION, *Plaintiff.*

By RICHARD J. CONNOR,
BART W. BUTLER,
Attorneys for Plaintiff,
821 15th Street NW., Washington 5, D. C.

3272

Amendment to Complaint Filed August 20, 1945

In United States District Court

Amendment to complaint

Filed Aug. 20, 1945

The Complaint in the above-entitled matter is hereby amended in the following particulars:

By amending Paragraph 7 to read as follows:

7. On the following dates Leo T. Crowley, the predecessor in office of the defendant, caused to be executed the following numbered Vesting Orders respecting the property described in the indicated sub-sections of Paragraph 6, above:

Date	Vesting order No.	Description
6-14-42	17	See Paragraph 6 (a).
6-14-42	14	See Paragraph 6 (b).
6-4-42	18	See Paragraph 6 (c).
6-30-42	36	See Paragraph 6 (d).
7-11-42	51	See Paragraph 6 (e).
6-4-42	19	See Paragraph 6 (f).

and on August 6, 1942, issued an amendment of Vesting Order No. 17 and on July 11, 1944, the defendant issued an amendatory and supplemental order to Vesting Order No. 14.

By amending Paragraph 9 to read as follows:

9. At no time, at or since the dates mentioned in Paragraphs 6, 7 and 8 above, has any of the property de-
3273 scribed in Paragraph 6 above, been owned or controlled, directly or indirectly, in whole or in part, by any person who was or is an enemy or ally of enemy within the meaning of the Trading with the Enemy Act.

By amending Paragraph 10 to read as follows:

10. At no time, at or since the dates mentioned in Paragraph 6, 7, and 8 above, has any of the property described in Paragraph 6 above, been owned or controlled, directly or indirectly, in whole or in part, by any person who was or is a national of a designated enemy country.

By adding a paragraph numbered 10 (a) reading as follows:

10 (a). At no time, at or since the dates mentioned in Paragraphs 6, 7 and 8 above, has any of the property described in Paragraph 6 above, directly or indirectly, in whole or in part, been owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of:

(i) An enemy or ally of enemy within the meaning of the Trading with the Enemy Act.

(ii) A designated enemy country within the meaning of the Trading with the Enemy Act or any executive orders issued pursuant thereto.

(iii) Any national of a designated enemy country within the meaning of the Trading with the Enemy Act or any executive orders issued pursuant thereto.

By adding a paragraph numbered 10 (b) reading as follows:

10 (b). At no time, at or since the dates mentioned in Paragraphs 6, 7 and 8 above, have any of the corporations whose names are stated in Paragraph 6 above been an enemy or ally of enemy within the meaning of the Trading with the Enemy Act or a national of a designated enemy country within the meaning of the Trading with the Enemy Act or any of the executive orders issued pursuant thereto.

By adding to the prayer for relief in said Complaint a subparagraph (d) reading as follows:

(d) Such other or further relief as is warranted in the premises.

Answer to Complaint as Amended Filed February 6, 1948

3286 Defendant Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, for his answer to the complaint as amended:

1. Admits that this action purports to be brought under the Trading with the Enemy Act, as amended, and except as thus expressly admitted, denies each and every allegation contained in Paragraph 1 of the complaint.

2. Admits the allegations contained in Paragraph 2 of the complaint.

3. Admits that plaintiff is a corporation organized under the laws of the Confederation of Switzerland, and except as thus expressly admitted, alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the complaint.

4. Denies each and every allegation contained in Paragraph 4 of the complaint.

5. Denies each and every allegation contained in Paragraph 5 of the complaint.

6. Admits that immediately prior to the respective dates of vesting thereof the property described in Paragraph 6 of the complaint was held or registered in the name of the plaintiff or its nominees, agents, or trustees, and that plaintiff was a party to the contract described

in subparagraph 6(e) of the complaint, but denies
3287 that plaintiff was the real, beneficial owner of such property, and except as thus expressly admitted, denies each and every allegation contained in Paragraph 6 of the complaint.

7. Admits the allegations contained in Paragraph 7 of the complaint, except that defendant alleges that Vesting Order Nos. 14 and 17 were executed on June 4, 1942 and that Vesting Order No. 51 was executed on July 10, 1942.

8. Admits that Leo T. Crowley vested the property described in Paragraph 6 of the complaint under the authority of the Trading with the Enemy Act, as amended, and without the consent of the plaintiff, and except as thus expressly admitted, denies each and every allegation contained in Paragraph 8 of the complaint.

9. Alleges that on and after the respective dates of vesting title to the property described in Paragraph 6 of the complaint has been vested in the Alien Property Custodian and in the Attorney General, as successor to the Alien Property Custodian, on behalf of the United States of America, and otherwise denies each and every allegation contained in Paragraph 9 of the complaint.

10. Alleges that on and after the respective dates of vesting title to the property described in Paragraph 6 of the complaint has been vested in the Alien Property Custodian and in the Attorney General, as successor to the Alien Property Custodian, on behalf of the United States of America, and otherwise denies each and every allegation contained in Paragraph 10 of the complaint.

11. Alleges that on and after the respective dates of vesting title to the property described in Paragraph 6 of the complaint has been vested in the Alien Property Cus-

todian and in the Attorney General, as successor to the Alien Property Custodian, on behalf of the United States of America, and otherwise denies each and every allegation contained in Paragraph 10(a) of the complaint.

12. Alleges that the Alien Property Custodian
3288 vested certain shares of stock of the corporations referred to in Paragraph 6 of the complaint, as more particularly described in the vesting orders referred to in Paragraph 7 of the complaint, and otherwise denies each and every allegation contained in Paragraph 10(b) of the complaint.

13. Admits that on May 27, 1943 plaintiff filed a notice of claim with the Alien Property Custodian with respect to the property described in Paragraph 6 of the complaint, and except as thus expressly admitted, denies each and every allegation contained in Paragraph 11 of the complaint.

14. Admits that defendant and his predecessors have retained and that defendant is now retaining the property described in Paragraph 6 of the complaint, and except as thus expressly admitted, denies each and every allegation contained in Paragraph 12 of the complaint.

WHEREFORE the defendant demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

DAVID L. BAZELON
David L. Bazelon
Assistant Attorney General

THOMAS E. HARRIS
Thomas E. Harris
Special Assistant to the Attorney General.

Pretrial Proceedings and Defendant's Attached Memo Filed October 25, 1948

3316 STATEMENT OF NATURE OF CASE:

Action under Section 9 of the Trading with the Enemy Act to recover certain property originally belonging to plaintiff and which was seized by the Alien Property Custodian.

The Supreme Court has held that the plaintiff may maintain this action under Section 2, 332 U. S. 480 (1947). The plaintiff is a corporation organized and existing under the laws of Switzerland.

Defendant contends that the stock of the corporation is held or that the corporation is controlled by enemy aliens. Defendant admits that the property referred to in the complaint was seized by the Alien Property Custodian and at the time of the seizure it was the property of the plaintiff.

The only issue of fact in the case is whether the stock of the plaintiff is owned by or the plaintiff is otherwise controlled by enemy aliens.

Defendant further claims and presents an additional issue that the plaintiff corporation was doing business in a country with which the United States was at war and is therefore itself an enemy.

Defendant claims that plaintiff corporation was doing business in an enemy country i.e. Hungary from the middle 1930s to 1942.

Specifically defendant claims that plaintiff operated mines in Hungary either directly or through others.

It is stipulated that the defendant will furnish plaintiff's counsel with those portions of the hearing before the Alien Enemy Hearing Board which relates to the operation of the mines.

Defendant's contentions are set forth in greater detail in the attached memorandum which is made a part of this memorandum.

3317 It is stipulated that Exhibit 17, attached to defendant's notice to admit, a folder consisting of five pages, is a photostat of a document in the files of the City Bank Farmers Trust Company.

That the document heretofore identified as Exhibit 17, a folder consisting of five pages, was kept by the City Bank Farmers Trust Company in the regular course of business and that it was the regular course of business of the City Bank Farmers Trust Company to keep such document.

That pages 2 and 5 of such document were signed by Fritz von Opel.

STIPULATIONS: By agreement of counsel for the respective parties, present in Court, it is ordered that the subsequent course of this action shall be governed by the following stipulations unless modified by the Court to prevent manifest injustice:

The plaintiff stipulates that the translations furnished by the defendant of exhibits that were identified at the taking of depositions is an accurate translation.

Defendant admits that the plaintiff is a Swiss corporation.

It is stipulated that each party may call two expert witnesses as to German law and one witness as to Swiss law.

It is stipulated that in November 1939 Fritz Von Opel became a citizen of the principality of Lichtenstein. Defendant contends however that under German law he did not thereby lose German citizenship.

It is stipulated that photostats may be produced in evidence at the trial in lieu of original documents subject to correction.

It is stipulated that the agreement bearing date of Oct. 5, 1931 was signed by the parties whose signatures it purports to bear. The agreement is being marked. It is further stipulated that document was executed sometime prior to Jan. 1, 1932. It is further stipulated that a photostatic copy may be substituted for the original.

Dated Oct. 22, 1948

A. HOLTZOFF,
Pretrial Justice.

REMARKS of Pretrial Justice for consideration of Trial Justice:

Attorneys authorized to act:

RICHARD CONNOR
Attorney for Plaintiff.

THOMAS HARRIS
Attorney for Defendant.

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Defendant's Contentions

3318 1. Under Section 2 of the Trading with the Enemy Act and the decision of the Supreme Court in *Uebersee v. Clark*, 332 U. S. 480 (1947) plaintiff corporation is enemy tainted and may therefore not recover, if it is owned or controlled by enemies. It is undisputed that all of the stock of plaintiff corporation was acquired by Fritz von Opel solely with the proceeds of an alleged gift agreement of October 5, 1931 between Wilhelm and Marta von Opel and Fritz von Opel. Defendant contends that the plaintiff's enemy taint exists by reason of any *one* of the following grounds:

1. The alleged gift agreement of October 5, 1931 was sham and fictitious, and did not operate to pass title from Wilhelm and Marta von Opel to Fritz von Opel. The stock of plaintiff, therefore, was at the time of vesting, owned by Wilhelm and Marta von Opel, residents and nationals of Germany, and enemies under the Act.

2. The usufruct provided for in the alleged gift agreement of October 5, 1931 was never validly created under German law; said usufruct was an essential part of the agreement; since the usufruct was invalid, the entire agreement was invalid, and therefore did not pass title from Wilhelm and Marta von Opel to Fritz von Opel. The stock of plaintiff, therefore, was at the time of vesting owned by Wilhelm and Marta von Opel, residents and nationals of Germany, and enemies under the Act.

3319 3. If the entire gift agreement of October 5, 1931 be considered valid, the stock of plaintiff was, by reason of the usufruct provision, owned or controlled by, or was held on behalf of Wilhelm and Marta von

Opel, residents and nationals of Germany, and enemies under the Act.

4. Even if it be assumed that Fritz von Opel was plaintiff's sole stockholder, as plaintiff alleges, Fritz von Opel was an agent of the German government or was acting on behalf of that government while the United States was at war with Germany, and is, therefore, an enemy under Section 2 of the Trading with the Enemy Act. Consequently, plaintiff is owned or controlled by an enemy under the Act.

5. If it be assumed that the stock of plaintiff is owned by Fritz von Opel, as plaintiff alleges, Fritz von Opel is a national of Germany and plaintiff is owned or controlled by a national of Germany and may not recover under the provisions of Sections 2 and 39 of the Trading with the Enemy Act.

II. Plaintiff was doing business in a country with which the United States was at war and is therefore itself an enemy under the provisions of Section 2 of the Trading with the Enemy Act and may not recover.

Plaintiff's Interrogatories, Served October 27, 1948

3339 To: DAVID L. BAZELON
THOMAS E. HARRIS
MYRON C. BAUM
JOSEPH LAUFER
Attorneys for Defendant
Department of Justice
Washington 5, D. C.

Interrogatories on behalf of plaintiff to be answered by the defendant:

1. State what the defendant means by the word "sham" as used in sub-paragraph 1 of the memorandum "Defendant's Contentions".

2. State what the defendant means by the word "fictitious" as used in sub-paragraph 1 of the memorandum "Defendant's Contentions".

3. State the provision of German law upon which the defendant relies in sub-paragraph 2 of the memorandum "Defendant's Contentions", which states "The usufruct provided for in the alleged gift agreement of October 5, 1931 was never validly created under German law".

4. State the provision of German law on usufruct upon which the defendant relies in its contention in sub-paragraph 3 of the memorandum "Defendant's Contentions" that the stock of plaintiff was, by reason of the usufruct provision, owned or controlled by, or was held on behalf of Wilhelm and Marta von Opel, residents and nationals of Germany, and enemies under the Act.

5. State the nature of Fritz von Opel's agency for the German Government and in what respect he acted for that Government as set forth in sub-paragraph 4 of the memorandum "Defendant's Contentions".

6. State the evidence, documentary or otherwise, upon which the defendant relies for the statement in sub-paragraph 4 of the memorandum "Defendant's Contentions" that "Fritz von Opel was an agent of the German Government or was acting on behalf of that Government while the United States was at war with Germany, and is, therefore, an enemy under Section 2 of the Trading with the Enemy Act".

7. State the evidence, documentary or otherwise,
3340 upon which the defendant relies for the statement in sub-paragraph 5 of the memorandum "Defendant's Contentions" that "Fritz von Opel is a national of Germany".

8. State the names and addresses of the witnesses, if any, and the substance of their testimony, upon which the defendant intends to rely for any and/or all of defendant's contentions.

9. As to "II" of the "Defendant's Contentions" it is the understanding of the plaintiff that should the defendant endeavor to prove that "the plaintiff was doing business in a country with which the United States was at war" that the defendant, pursuant to the order of the court at pre-trial, will supply to the plaintiff that evidence upon which the defendant relies.

DATED, October 27, 1948.

RICHARD J. CONNOR
WALTER E. GALLAGHER
Attorneys for Plaintiff

Plaintiff's Interrogatory, Served October 29, 1948

3341 To: DAVID L. BAZELON
THOMAS E. HARRIS
MYRON C. BAUM
JOSEPH LAUFER
Attorneys for Defendant
Department of Justice
Washington 5, D. C.

Interrogatory on behalf of plaintiff to be answered by the defendant:

1. State whether or not the defendant has in its possession any documents, papers, books, memoranda and/or letters from the files of the General Motors Corporation, or from the files of any of its officers or employees, which in any way pertain to the purchase of Adam Opel, A.G. by the General Motors Corporation, other than documents, papers, books, memoranda and/or letters, copies of which have heretofore been delivered to the plaintiff by the defendant.

DATED, October 28, 1948.

RICHARD J. CONNOR
WALTER E. GALLAGHER
Attorneys for Plaintiff

Defendant's Answer to Plaintiff's Interrogatories Filed November 12, 1948

3353 Defendant makes the following answers to plaintiff's interrogatories dated October 27, 1948:

1. In using the word "sham" in Paragraph 1 of the document entitled 'Defendant's Contentions", defendant ascribes to that word the meaning given to it in Webster's New International Dictionary, Second Edition (1948) viz.: "false; counterfeit; pretended; feigned" and in Black's Law Dictionary, Third Edition (1933) viz/: "false".

2. In using the word "fictitious" in Paragraph 1 of the document entitled "Defendant's Contentions", defendant ascribes to that word the meaning given to it in Webster's New International Dictionary, Second Edition (1948) viz.: "feigned; imaginary; pretended; not real; counterfeit; not genuine" and in Black's Law Dictionary, Third Edition (1933) viz.: "false, feigned or pretended; imaginary; not real; counterfeit. Arbitrarily invented and set up, to accomplish an ulterior object."

3. The provisions of German Law referred to in Subparagraph 2 of the document entitled "Defendant's Contentions" are those provisions included in the German Civil Code, Book 3, Chapter 5, Title 2 (Usufruct.)

4. The provisions of German law which defendant deems applicable to the contentions stated in Subparagraph 3 of the document entitled "Defendant's Contention" are the provisions included in the German Civil Code, Book 3, Chapter 5, Title 2 (Usufruct).

5 and 6. Defendant withdraws the contention advanced in Subparagraph 4 of the document entitled "Defendant's Contentions".

3354 7. The evidence upon which defendant relies for the statements contained in Subparagraph 5 of the document entitled "Defendant's Contentions" is as follows:

(a) The Law on German Nationality of July 22, 1913, Section 25.

(b) The lack of any evidence that Fritz von Opel did not make application to the competent German authorities for permission to retain his German citizenship when he purchased Liechtenstein citizenship.

(c) The fact that the Swiss Government has continued to consider Fritz von Opel a citizen of Germany and has refused to recognize any alleged loss of German citizenship.

(d) Evidence to be obtained through cross-examination of Fritz von Opel and Daniel Gros.

8. The names and addresses of the witnesses whom defendant now intends to call are as follows:

(a) Mr. Joseph Laufer, Attorney, Department of Justice, Washington, D. C.

(b) Dr. Magdalena M. Schoch, Attorney, Department of Justice, Washington, D. C.

(c) Mr. Harry Kiefer, United States Court House, Foley Square, New York, N. Y.

(d) Mr. B. P. Crittendon, RFD. #1, Southbury, Connecticut.

(e) Mr. Rudolf Deku, Aachen, Germany.

(f) Mr. Hans Joachim Caesar, Duesseldorf, Germany.

(g) Mr. J. Mason Houghland, Spur Distributing Company, Nashville, Tennessee.

(h) Mr. Calvin Houghland, c/o J. Mason Houghland, Spur Distributing Company, Nashville, Tennessee.

(i) Mr. James D. Mooney, Willys Overland Motors, Toledo, Ohio (by deposition).

(j) Mr. Wilhelm Jelkmann, Frankfurt, Germany (by deposition).

(k) Mr. Carl Klar, Kroppach, Germany (by deposition).

(l) Mr. Karl Friedrich Wilhelm, Berlin, Germany, (by deposition).

3355 9. Defendant cannot state what plaintiff's understanding is as to what evidence defendant would supply to the plaintiff on the issue of whether plaintiff was doing business in a country with which the United States was at war. The Court, however, at the pre-trial hearing directed the defendant to furnish "plaintiff's counsel with those portions of the hearing before the Alien Enemy Hearing Board which relates to the operation of the mines." Defendant complied on October 29, 1948.

Defendant makes the following answer to plaintiff's interrogatory dated October 28, 1948:

1. Defendant does not have in his possession any documents, papers, books, memoranda and/or letters from the files of the General Motors Corporation, or from the files of any of its officers or employees, which in any way pertain to the purchase of Adam Opel, A. G. by the General Motors Corporation, other than documents, papers, books,

memoranda and/or letters, copies of which have heretofore been delivered to the plaintiff by the defendant.

DATED: November 10, 1948

/s/ JOHN L. BURLING

John L. Burling.
Chief Trial Attorney
Attorney for Defendant

Sworn to before me this
10th day of November, 1948

Gladys E. McGaffey
Notary Public, D. C.

(SEAL)

Defendant's Supplemental Answer to Interrogatories Filed November 18, 1948

3356 Defendant further states in reply to Interrogatory No. 7 of the interrogatories served by plaintiff upon defendant on October 27, 1948:

(e) A letter to Dr. Daniel Gros from Mrs. Fritz von Opel dated May 6, 1946 in which is included a purported quotation from a letter from the Swiss Government made in connection with an application filed on behalf of Fritz von Opel, which says in part as follows:

"We beg to remind you, however, that according to section 25 of the German citizenship act of July 22, 1913, loss of the German nationality not only depends on the acquisition of a foreign nationality but also on the prerequisite that the person in question does not have his domicile nor his permanent residence in Germany, and that he has not upon his application, received the written consent of the competent authorities to keep his German nationality before acquiring the foreign nationality."

(f) A letter from Dr. Daniel Gros to a Dr. Schaecker, of the firm of Adam Opel, A. G., dated May 8, 1946, in which Dr. Gros requests Dr. Schaecker to obtain a certificate relating to the nationality of Fritz von Opel.

(g) A document executed by the Office of the County Chairman (Landratsamt), Gross-Gerau, referring to an application filed by Dr. Daniel Gros, attorney
3357 at law, Wiesbaden-Dotzheim, seeking a certificate reciting that Fritz von Opel had not filed

an application pursuant to Section 25, Article 2 of the German citizenship law to retain German citizenship and stating that such certificate could not be supplied because all files on naturalization and denaturalization had been lost as a result of the war and that any investigation of the case was impossible.

Dated: Washington, D. C.
November 16, 1948

/s/ JOHN L. BURLING

John L. Burling
Chief Trial Attorney
Attorney for Defendant

Subscribed and sworn to before me this 16th day of November, 1948.

GLADYS E. MCGAFFEY
My Commission Expires 9/30/53

(Seal)

Defendant's Interrogatories to Plaintiff
Filed November 18, 1948

3358 To: WALTER E. GALLAGHER
GALLAGHER, OSHERMAN, CONNOR & BUTLER
821 15th Street, N. W.
Washington, D. C.
Attorneys for Plaintiff

Interrogatories on behalf of defendant to be answered by plaintiff:

1. Was the usufruct provided for in the alleged gift agreement of October 5, 1931 between Wilhelm and Marta von Opel and Fritz von Opel ever validly created?

2. If the above-mentioned usufruct was validly created, when was it so created?

3. If the above-mentioned usufruct was validly created, state the manner in which it was created and under what provisions of German law it was created.

4. If the above-mentioned usufruct was not validly created, state the circumstances and the provisions of German law which rendered it invalid.

5. Is the above-mentioned usufruct still in existence?

6. If the above-mentioned usufruct is not in existence, state when it ceased to exist and in what manner its existence was terminated.

7. State the names of the stockholders of plaintiff corporation from October 5, 1931 to June 1942, showing

the period of time during which each person was a stockholder.

8. State the names of the beneficial owners of the stock of plaintiff corporation from October 5, 1931 to June 1942, showing the period of time during which each person beneficially owned the stock.

9. State the names of all persons having ultimate beneficial ownership of the assets of the plaintiff corporation from October 5, 1931 to June 1942, the nature of the interest and the period of time during which it existed.

3359 10. Describe in detail the business organization existing under the laws of the principality of Liechenstein known as Frina Verwaltungsanstalt.

11. When was Frima Verwaltungsanstalt organized and for what purpose?

12. State for each year from 1933 to 1948 what assets Frima Verwaltungsanstalt has held.

13. Name the beneficial owner or owners of Fruna Verwaltungsanstalt from 1933 to June 1942.

14. State when, from whom and for what price Frima Verwaltungsanstalt acquired 97 shares of plaintiff corporation.

15. State whether Frima Verwaltungsanstalt ever entered into a transaction whereby it sold or purported to sell 97 shares of the stock of plaintiff corporation to a national or nationals of Switzerland.

16. If the answer to question No. 15 is in the affirmative, state when the sale or purported sale took place; name the purchaser or purchasers of the shares; state at what price the shares were sold by Frima Verwaltungsanstalt; and state in what manner the purchase price was paid to Frima Verwaltungsanstalt.

17. State in detail what was done with respect to the certificates of the 97 shares of plaintiff corporation transferred from Frima Verwaltungsanstalt to the purchasers referred to in question No. 16 above from the time of the sale until the shares were reacquired by Frima Verwaltungsanstalt.

18. State in detail the terms of any agreement or agreements, including secret or oral agreements entered into between Frima Verwaltungsanstalt and the Union Bank of Switzerland relating to the aforesaid sale of 97 shares of plaintiff corporation.

19. State in detail the terms of any agreement or agreements, including secret or oral agreements entered into between Frima Verwaltungsanstalt and the aforesaid purchasers of 97 shares of plaintiff corporation.

20. State whether Frima Verwaltungsanstalt was required to deposit any cash and/or securities with the Union Bank of Switzerland in connection with the aforesaid sale of 97 shares of the stock of plaintiff corporation and, if so, describe the transaction in detail.

21. As of October 30, 1941, what was the approximate value of the assets of Frima Verwaltungsanstalt and of plaintiff corporation?

22. As of June 1, 1936 and as of October 30, 1941, what was the book value per share of plaintiff corporation?

3360 23. Did Prima Verwaltungsanstalt ever reacquire the 97 shares of plaintiff corporation which it had previously sold as aforesaid? If so, state from whom it reacquired the shares; state the price per share which Frima Verwaltungsanstalt paid; state with what funds Frima Verwaltungsanstalt made the purchase; and give the date of the transfer.

24. State the names of the directors of plaintiff corporation from October 5, 1931 to June 1942 showing the period of time during which each such person was a director.

25. State the names of the persons who voted the stock, or in whose behalf the stock of plaintiff was voted, at each stockholders' meeting of plaintiff corporation from October 5, 1931 to June 1942.

26. State the names and addresses of the witnesses whom plaintiff intends to call on its behalf upon the trial of this action and state whether the testimony of such witnesses will be by deposition or in person.

27. Describe the nature of plaintiff's interest in bauxite mines in Hungary at all times from October 5, 1931 to June 1942.

28. State the nature of plaintiff's interest in any corporation holding or owning bauxite mines in Hungary or bauxite mining rights in Hungary at all times from October 5, 1931 to June 1942.

29. Describe in detail all actions taken by plaintiff, or by any agent of plaintiff including Fritz von Opel, cor-

cerning the mining of bauxite in Hungary at all times from October 5, 1931 to June 1942.

30. Are the documents described immediately below in subparagraphs (a) and (b) in plaintiff's custody or control and, if so, where are they at the present time:

(a) Copy of the certificate obtained in September or October 1939 by plaintiff from the Schweizerische Bankgesellschaft (Union Bank of Switzerland) concerning the ownership of the Uebersee shares and submitted, on or before October 23, 1939, to the Alien Property Custodian of the Tanganjika Territory, Dar-es-Salaam, by Leslie, Strachan & Co., attorneys for plaintiff, as appears from their letter dated October 23, 1939 and addressed to plaintiff. (See Uebersee records, pink folder, consecutive No. 14, marked "Kitopeni and Mpembini, Kidagoni and Mbegani Estates, Bagamoyo, Jahres-Abschluesse.)

(b) Copy of the certificate obtained by plaintiff from the Schweizerische Bankgesellschaft on or before November 14 concerning the ownership of the Uebersee shares and submitted subsequently to the Alien Property Custodian of the Tanganjika Territory, Dar-es-Salaam by Leslie, Strachan & Co., attorneys for plaintiff, as appears from the covering letter addressed on November 14, 1939 by Dr. Henggeler on behalf of plaintiff to Leslie, Strachan & Co. (same file).

3361

Dated: Washington, D. C.
November 16, 1948

/s/ DAVID L. BAZELON
David L. Bazelon
Assistant Attorney General

Plaintiff's Answer to Interrogatories Served November 26, 1948

District of Columbia, ss:

Plaintiff makes the following answers to defendant's interrogatories dated November 16, 1948:

1. Plaintiff objects to interrogatory No. 1 as the same calls for an opinion on matters of law and fact.

2. Plaintiff objects to interrogatory No. 2 as the same calls for an opinion on matters of law and fact.

3. Plaintiff objects to interrogatory No. 3 as the same calls for an opinion on matters of law and fact.

4. Plaintiff objects to interrogatory No. 4 as the same calls for an opinion on matters of law and fact.

5. Plaintiff objects to interrogatory No. 5 as the same calls for an opinion on matters of law and fact.

6. Plaintiff objects to interrogatory No. 6 as the same calls for an opinion on matters of law and fact.

7. Fritz von Opel acquired 97 out of 100 shares of the Overseas Finance Corporation in the winter of 1932. Payment was made on February 2, 1932. The other three shares were in the hands of members of the Administrative Council as required by Swiss Corporation law. The members during the entire period in question were Dr. Hans Frankenburg, Dr. Eugene Meier and Dr. Joseph Henggeler, who were within the year replaced as members of the Administrative Council and shareholders by Adolf Gaeng. The remaining 97 shares were held by Fritz von Opel and
3363 transferred to the possession of Frima in 1935 or 1936. It is impossible for the plaintiff to give a more

definite date at this time inasmuch as the books of Frima which reflect the correct date are, at the time of the preparation of these answers to the defendant's interrogatories, still in the possession of the defendant. On July 22, 1936 these 97 shares were delivered to the Bankgesellschaft and returned by the Bankgesellschaft into the possession of Frima on November 4, 1941. In the meantime these 97 shares were in the possession of the following clients of the Bankgesellschaft:

Name	*Shares*
Herrn Direktor C. Buhler, Zurich	6
Adler & Co. A. G. Banzuiers, Zurich	9
Credit Industriel, Glarus	5
Herrn Direktor H. Gruebler, Zurich	9
Bank in Winterthur, Winterthur	8
Herrn Direktor M. Zimmermann, Zurich	6
Herrn Direktor F. Zehnder, Zurich	7
Herrn Direktor F. Richner, Zollikon	4
Herrn A. Lang, Zurich	2
Herrn Direktor E. Baechi, Zurich	6
Herrn Direktor P. Jaberg, Zurich	7
Herrn Dr. H. Weiss, Zollikon	5
Herrn Dr. L. Birchler, Zollikon	4
Herrn G. A. Keller, Zurich	4
Herrn Dr. A. Schaefer, Zurich	6
Herrn Direktor Dr. E. Lang, Baden	5
Herrn Hans Keller, Ober-Engstringen	4
	97

From the date of return up to date they are again in the possession of Frima.

Fritz von Opel purchased the shares in 1932 through Adler & Company as Agent for the former owners who are unknown to him.

8. The names of the beneficial owners of the stock of plaintiff corporation from October 5, 19[illegible] to June 1942 are the same as enumerated under Section 7 above, with the exception of the three shares held by the three members of the Administrative Council, who are holding these shares on behalf of Fritz von Opel.

9. No one else but the share-holders had any beneficial interest in the assets of the plaintiff corporation between the beginning of 1932 and June 1942.

10. Frima Verwaltungsanstalt organized under the law of the principality of Liechtenstein has been and is an incorporated trust. Liechtenstein law knows this institution for many years. It is best described as "incorporated trust", such a trust on behalf of Fritz von Opel.

3364 11. Frima was founded in May 1934 by "Declaration of Foundation" by Adolf Gaeng as stipulated. The purpose for which it was organized was to give better protection to the interests of Mr. Fritz von Opel.

12. The books of Frima Verwaltungsanstalt for the period from 1933 to 1948 were submitted. They answer exactly what assets were held by Frima Verwaltungsanstalt.

13. Between the years from 1933 to June 1942, Fritz von Opel was the beneficial owner of Frima Verwaltungsanstalt.

14. Frima acquired the 97 shares of plaintiff corporation from Fritz von Opel. As mentioned above, Frima is a trust

and keeps the 97 shares on behalf of Fritz von Opel as beneficiary. There was certainly no price paid.

15. Yes.

16. Yes. The answer to the first part of this question is shown under Section 7. The price and names of purchasers are shown below:

Name	*Shares*	*Price*
Herrn Direktor C. Huhler, Zurich	6	$ 9,999.96
Adler & Co. A. C. Banzuiers, Zurich	9	14,999.94
Credit Industriel, Glarus	5	8,333.30
Herrn Direktor H. Gruebler, Zurich	9	14,999.94
Bank in Winterthur, Winterthur	8	13,333.28
Herrn Direktor M. Zimmermann, Zurich	6	9,999.96
Herrn Direktor F. Zehnder, Zurich	7	11,666.62
Herrn Direktor K. Richner, Zollikon	4	6,666.64
Herrn A. Lang, Zurich	2	3,333.32
Herrn Direktor E. Baechi, Zurich	6	9,999.96
Herrn Direktor P. Jaberg, Zurich	7	11,666.62
Herrn Dr. H. Weiss, Zollikon	5	8,333.30
Herrn Dr. L. Birchler, Zollikon	4	6,666.64
Herrn G. A. Keller, Zurich	4	6,666.64
Herrn Dr. A. Schaefer, Zurich	6	9,999.96
Herrn Direktor Dr. E. Lang, Baden	5	8,333.30
Herrn Hans Keller, Ober-Engstringen	4	6,666.64
Total	97	$161,666.02

The purchase price was paid to Frima in the regular way.

17. The certificates of the 97 shares of plaintiff corporation transferred from Frima Verwaltungsanstalt to the purchasers referred to in question 16 above from the time of the sale until the shares were reacquired by Frima Verwaltungsanstalt were handed over to the Schweizerische Bankgesellschaft on June 22, 1936. It is to be assumed that this title remained with the bank. The certificates were returned by the Schweizerische Bankesellschaft to Adler & Company on behalf of Frima on November 4, 1941.

3365 18. The only agreement between Frima and Schweizerische (Not Union Bank of Switzerland) relating to the aforesaid sale of 97 shares of plaintiff corporation, is the contract of June 1936, in pursuance to which Frima gives to the bank 97 shares of Overseas Finance Corporation, with an order to sell these securities for account of Frima to friends of the bank. The sales contract to be made by the bank with these friends of the bank shall provide for the purchase price of $1,666.66 per share. The bank on behalf of Frima was given the right to repurchase the shares for the same price of $1,666.66 per share. The bank guarantees on account of Frima, annual interest of 6% to be paid to the purchasers. Frima pledged to the bank in America obligations or preferred shares with a market value of $161,666.02.

19. There was no direct agreement between Frima and the purchasers of the 97 shares of plaintiff corporation. (Purchasers listed under Sec. 16.) The only agreement which existed between these purchasers was an agreement with the Schweizerische Bankgesellschaft containing nothing else but the purchase of the shares, the guarantee of 6% interest and the obligation to resell on request of the Bankgesellschaft.

20. This is answered by Section 18 hereof.

21. The best possible answer is reference to the books of the Frima Verwaltungsanstalt which are in the possession of the defendant at this time and the books of the plaintiff corporation.

22. Same as No. 21.

23. Yes. The shares were reacquired on the basis of the repurchase agreement described above. In regard to the funds used for the payment of the repurchase price, reference is made to No. 18 above. The transfer took place on November 4, 1941.

24. During the winter of 1932 until this date Dr. Meier of Liestal and Dr. Hans Frankenburg of New York remained directors. Dr. J. Henggeler was director between 1932 and 1943, at which time his place was taken by Adolf Gaeng.

25. In the books and correspondence open to the defendant for inspection there are lists of the participants in stockholders' meetings.

26. The names and addresses of the witnesses
3366 whom plaintiff now intends to call are as follows:

Fritz von Opel, Carlton Hotel, Washington, D. C.

Wilhelm von Opel, Wiesbaden, Germany
Mrs. Wilhelmina Dern nee Uebel, Frankfurt, Germany
Edith Esklony, Wiesbaden, Germany
Marta von Opel, Wiesbaden, Germany
Daniel Gros, Wiesbaden, Germany
} by deposition

Manfred Stansfield, 49 West 57th St. New York, N. Y. (Either by deposition or in person)

Dr. Heinrich Kronstein, 4616 Fessenden St., N. W., Wash., D. C.

Dr. Otto K. Kaufmann, Yale University, New Haven, Conn.

27. The plaintiff had no interest in bauxite mines or bauxite mining rights in Hungary at any time.

28. The plaintiff had no interest in any corporation holding or owning bauxite mines or mining rights in Hungary from October 5, 1931 to June, 1942.

29. Answered as to plaintiff in responses to interrogatories 27 and 28. However, Fritz von Opel organized the Transdanubia Bauxite A. G. having a capital of 300,000 pengoes partly paid in. This corporation owned bauxite mining rights in Hungary. No money was paid into or loaned to this corporation by Fritz von Opel or plaintiff after 1940, and to the best of Fritz von Opel's knowledge the Transdanubia Corporation ceased all mining operations in the winter of 1940-1941. Fritz von Opel has no knowledge of any operations by Transdanubia Corporation after the spring of 1941. The same is true of the plaintiff.

30. The documents described in paragraphs (a) and (b) of defendant's interrogatory No. 30 are not in the plaintiff's custody or control nor does the plaintiff know where they are at the present time.

Dated: Washington, D. C.
November 26, 1948

Plaintiff's Motion for New Trial on Newly Discovered Evidence, Filed May 5, 1949 and Affidavit of Eleonore Firnhammer Sworn to on April 27, 1949

3369 The Plaintiff moves for new trial on newly discovered evidence on the following grounds:

The newly discovered evidence will prove that on repeated occasions Wilhelm von Opel and his wife stated to the affiant, Eleonore Firnhammer their intention in having incorporated in a deed of gift of October 5, 1931, Plaintiff's Exhibit 5, a so-called "right of usufruct"; that on other occasions, particularly in the Summer of 1937 Wilhelm von Opel advised the affiant Eleonore Firnhammer that at long last his lawyer has succeeded in bringing negotiations with the German authorities to a favorable conclusion and that he no longer had any claim against his son; that in August of 1947 he, Wilhelm von Opel, told the affiant repeatedly that he could not understand the action taken by the American authorities in this matter in view of the fact that even the Nazis had recognized the fact that he had abandoned all claims against his son. Said evidence is not cumulative nor corroborative of evidence introduced in the trial in that it is affirmative proof in contradiction of Finding 51 in this matter, wherein the Court said:

> "In 1935 Wilhelm von Opel discussed the waiver of his right to a usufruct but it was never after its creation waived or abandoned by any statement or act of Wilhelm or Marta von Opel.".

and would lead to a change in the outcome of the trial as follows:

Said evidence would prove by a preponderance of evidence that a waiver was in fact made by Wilhelm and Marta von Opel of any claims which they had against
3379 their son, Fritz von Opel and/or plaintiff corporation resulting fron the gift agreement of October 5,

1931, and would result in a finding that Wilhelm and Marta von Opel had no interest in plaintiff corporation or any stock thereof at the time of vesting, and would, therefore, compel this court to render judgment in favor of plaintiff.

The said newly-discovered evidence will be given by Eleonore Firnhammer, as appears more fully from her affidavit sworn to on April 27th, 1949, and hereto annexed.

The said evidence was discovered subsequent to the trial of this matter in the following manner:

Mr. Fritz von Opel advised counsel for the plaintiff corporation, Mr. Walter E. Gallagher and Mr. Christopher T. Boland, that after the opinion of the Court was rendered, Eleonore Firnhammer had a conversation with Mrs. Margot von Opel, the wife of Mr. Fritz von Opel, with respect to the opinion of this Court, at which time she stated to Mrs. von Opel the facts set forth in her affidavit annexed hereto, and stated further that in the light of those facts she was unable to understand the Court's opinion.

The said evidence could not be obtained and introduced by the plaintiff at the trial with the exercise of due diligence, for the following reasons:

Mr. Fritz von Opel states that his relations with Eleonore Firnhammer have been very strained for many years. He had no knowledge that Eleonore Firnhammer knew any facts related in the attached affidavit. Neither plaintiff corporation nor its counsel were aware of the fact that Eleonore Firnhammer had any knowledge of the facts related in the affidavit and the exercise of due diligence would not have caused the plaintiff corporation or its counsel in endeavoring to ascertain all evidence which would be material in the trial of the issues in this case to have discovered this evidence in advance of the
3371 close of trial.

WALTER E. GALLAGHER

Dated:
May 5, 1949.

AFFIDAVIT

3373 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

ELEONORE FIRNBERGER, being duly sworn, deposes and says:

I was born in the year 1897 in Frankfurt on Main Germany. I am an Austrian by marriage. I was imprisoned by the Nazi Secret Police during the war for Anti-Nazi activities. Before leaving Austria I was employed by the American Occupation Army in their so-called special service. I was permitted to emigrate to this country under the provision for so-called politically persecuted people. My emigration to the United States was sponsored by my lifelong friend, Mrs. Blanche Goldmark of New York City. I am now employed in New York City as a saleslady in the department store of McCreary & Company.

My mother and Wilhelm von Opel are cousins and as a child I very often came to the house of Mr. von Opel's mother, as well as his own. As Wilhelm von Opel was considerably older than I, I used to address him and his wife as uncle and aunt. As I had studied music for many years and Wilhelm von Opel was a great lover of music, I was a frequent companion of Wilhelm von Opel and his wife whenever they went to musical or theatrical event. Around 1930 when both of his children began to live abroad I saw Wilhelm and his wife very frequently and I became a close confident of Wilhelm von Opel. After the sale of the factory around 1930 he spent much time in Berlin where I lived and which was then, before the Nazis came into power, one of the musical centers of Europe. As I took over the years more and more their daughter's place with whom they had fallen out in the early 30's, both Wilhelm and Marta von Opel, and particularly Wilhelm, frequently discussed with me their many problems, not only

family questions but also political questions connected with the seizure of power by the Nazis in 1933.

3374 At this time, 1933 or 1934, Wilhelm von Opel told me about his troubles with the Nazis and how they were looking for an excuse to persecute him, because he had always slighted them before 1933. He told me that the Nazis accused him of "economic treason" because he had sold a German factory to what they called the "Jewish General Motors." He was at that time very much upset, the reason being, as he told me, that the Nazis had threatened him to put him before the peoples' court because he had not delivered to the Nazis some part of his son's income, an income which he said he had not received and which he did not want.

About a year later, in 1934 or 1935, Wilhelm von Opel told me that this matter had been temporarily settled after payment of a very heavy fine of several million marks, but that he was afraid that the Nazis might use what he called the niessbrauch provision of the gift agreement to jump on him anew year after year. He told me that he didn't need, nor desire, any income from his son, that this provision had been merely put in to educate his newly married son to live well within his means and that this niessbrauch was now hanging over his head like the sword of Damocles. He said he could hardly sleep for fear the Nazis might persecute him again and that the best way out was to explain to the authorities what his intentions had been from the beginning, namely that he had only wanted a protection in case of need and that he did not want to have any claims against his son because they would involve him in the strict regulations in regard to foreign currency. He told me that he had taken a lawyer, Dr. Gros, to represent him in this matter and he often complained about the great difficulties encountered and the slow progress made. All through the middle 30's he was very much worried about this matter.

In summer, 1937, however, before I left for a long visit with friends in the United States, I said good-bye to Wil-

helm von Opel. At this time he was very jubilant and told me that at long last his lawyer had succeeded in bringing his negotiations with the German authorities to a favorable conclusion and that he now felt much relieved and free from the pressure which had darkened his life for so many years.

3375 After the end of the war I saw Wilhelm von Opel and his wife repeatedly, the last time in August 1947 shortly before I emigrated to the United States. At this time an investigation by some American authorities was under way and he told me repeatedly that he could not understand what it was all about. He said that even the Nazis had recognized the fact that he had abandoned all claims against his son and that he hoped that all documents from the files of the German authorities would be given to the Americans to enable them to get a complete picture of the matter.

(Signed) ELEONORE FIRNHAMMER

Subscribed and sworn to before me
this 27th day of April, 1949.

/s/ LOUIS ROSENSTEIN

(SEAL)

Opinion of the District Court
Filed February 21, 1949

3376 This suit was brought by plaintiff, a corporation of Switzerland, the controlling stock of which is claimed to be beneficially owned by Fritz von Opel, a citizen of Liechtenstein, to recover shares of stock of American corporations vested by the Alien Property Custodian as enemy owned property. The principal issue is whether as of the time of vesting in June and July 1942, the stock was owned or controlled by Fritz von Opel, a neutral, or by his parents, Wilhelm and Marta von Opel, citizens of Germany and "enemies" within the provisions of the Trading with the Enemy Act.[1]

It is agreed that on and before October 5, 1931, Wilhelm and Marta von Opel owned 600 shares of stock of Adam Opel, A.G., a German Corporation, and that since 1929 such shares were deposited in the United States subject to an option agreement providing for their sale to General Motors Corporation for a specified sum in German reichsmarks.

Plaintiff claims that by a gift agreement executed on October 5, 1931, Wilhelm and Marta von Opel transferred their ownership in the shares of stock of Adam Opel, A.G., to their son, Fritz von Opel, and that in November, 1931, Fritz von Opel sold the stock to General Motors Corporation pursuant to the option. In the transaction he arranged to be paid in American rather than German currency. From the funds received, Fritz von Opel acquired plaintiff corporation. Later the American securities now held by defendant were purchased by plaintiff corporation. From 1932 until the time the American securities were vested pursuant to provisions of the Trading with the

1 Title 50 App. U. S. C. A. §§1 *et seq.*

Enemy Act, it is claimed Fritz von Opel owned 97 per
3377 cent of the shares of plaintiff corporation and through this ownership exercised control over the American securities. On November 21, 1939, Fritz von Opel became a citizen of Liechtenstein, which at all times during World War II was a neutral country. Any ownership or control of the American securities or any interest in them by Wilhelm or Marta von Opel as to the time the securities were vested, is denied. The agreement of October 5, 1931, indicated retention by the Opel parents of an interest in the Opel stock and any securities purchased by funds received from its sale, by way of what is known as a usufruct or "niessbranch" under German law. However, plaintiff claims such interest did not legally arise because of omission of words of assignment in the agreement and failure to deliver possession or co-possession to his parents of the property covered by the agreement. Moreover, it is plaintiff's claim that in 1935, a discussion was had by Wilhelm and Marta von Opel with their then attorney, Dr. Gros, with regard to any possible interest they might have in the property referred to in the agreement of October 5, 1931, and at that time Wilhelm and Marta von Opel orally waived such interest. Plaintiff, therefore, claims that if the Court should find any interest in the American securities existed in favor of Wilhelm or Marta von Opel previous to and at this time in 1935, it was effectively relinquished and surrendered, according to the laws of Germany, by the oral waiver.

The defendant makes a number of alternative claims in opposition to the return of the vested securities. First, it maintains the agreement dated October 5, 1931, relied on by plaintiff as having divested Wilhelm and Marta von Opel of their interest in the Opel stock and properties realized from any sale of the stock, was void because it was not executed on the date it bore, but at a time in November, 1931, following sale of the Opel stock in the United States for American currency. It is contended the

plan of Wilhelm von Opel was to make it appear that Fritz von Opel, who for several years had been a non-resident of Germany, known in German as a "devisen auslander", was the owner of the stock at the time it was sold in the United States, in which event it would be permissible, under Germany's foreign exchange laws, to receive payment in American currency, instead of in German reichsmarks. If the property was owned by Wilhelm von Opel or his wife, citizens and residents of Germany, known in that country as "devisen inlanders", the sale would be subject to Germany's foreign exchange laws. Passage of more stringent laws and regulations restricting sales of German property for foreign exchange were con-
3378 sidered imminent in Germany about this time. That there was not believed to be sufficient time on or about October 5, 1931, to complete a satisfactory agreement transferring title to Fritz von Opel before new laws and regulations were adopted. For this reason only a preliminary draft of the gift agreement was made at or about October 5, 1931, the actual execution of the agreement having occurred in November 1931, after the sale of the Adam Opel, A. G., stock in America and Fritz von Opel's return to Germany. To make the sale of stock in America for American currency appear to have been made by Fritz von Opel, a devisen auslander, the gift agreement was predated October 5, 1931.

Defendant maintains further, that regardless of whether the agreement was executed in October or November, 1931, it was not a *bona fide* transaction, but was in all respects a sham adopted by the parents as a means of making it possible, from a sale of assets outside of Germany, to obtain gold or American securities without apparently violating the exchange laws and regulations of Germany. By reason of such a sham transaction, defendant claims the agreement was void and Wilhelm and Marta von Opel continued to have complete ownership and control of the American securities sought to be recovered by this suit.

If the Court does not accept the claim of complete ownership by Wilhelm and Marta von Opel in the vested American securities, defendant contends the evidence establishes at the least that they held a substantial part ownership in the securities. It is conceded that the gift agreement itself, if found to be valid, did not effectually create in favor of Wilhelm and Marta von Opel a usufructuary interest in the property mentioned. However, defendant asserts such an interest came into existence at a later time, when delivery was made of the controlling shares of stock of plaintiff corporation to one Hans Frankenberg, who was then acting as agent for Wilhelm and Marta von Opel. It is maintained this was an *in rem* interest, according to the laws of Germany. Defendant makes an alternative claim of limited ownership, to the effect that if the Court should find a usufructuary interest in the property did not arise in favor of Wilhelm and Marta von Opel, as last hereinbefore asserted, nevertheless Wilhelm and Marta von Opel by the agreement dated October 5, 1931, obtained a right at any time to assert a claim *in personam* against Fritz von Opel for the creation of an *in rem* interest in the property mentioned in the gift agreement.

3379 Defendant's position with respect to any type of ownership the Court may find Wilhelm and Marta von Opel held in the American securities is that the evidence establishes there was not in fact a waiver or surrender of such ownership in 1933, or at any other time, but that their ownership continued in full effect until the Alien Property Custodian vested the American securities. The defendant also maintains that under German law a waiver of ownership in the property, if made, would be void unless a license was obtained and one was not obtained.

In the event the Court does not agree with any of the foregoing defenses, defendant makes two other points

which it submits should result in judgment against plaintiff. First, that the plaintiff corporation itself is an "enemy", within the definition of Section 2 of the Trading with the Enemy Act, in that it is incorporated within a country other than the United States and during the time the United States was at war, was doing business within the territory of a nation with which the United States was at war. Second, defendant maintains that while it concedes Fritz von Opel is a naturalized citizen of a neutral country of Liechtenstein, nevertheless he still is a German national, within the meaning of Section 39 of the Trading with the Enemy Act and is not entitled to obtain return of the vested property.

The evidence presented in this case has extended to many disputed items of fact, but it develops that upon reaching findings as to a limited number of them, this suit may be decided.

I find the agreement dated October 5, 1931, between Wilhelm and Marta von Opel, as donors, and their son Fritz von Opel, as donee, was made for the primary purpose of obtaining realization in the form of gold or American securities from the sale of the 600 shares of Opel Works stock, but there was also a purpose to make financial provision for Fritz von Opel. In the transaction, Wilhelm and Marta von Opel intended to retain a usufructuary interest, according to the laws of Germany, in any property which might be obtained from funds resulting from the sale in the United States of the Opel Works stock, and it was only by inadvertence this was not accomplished by the agreement itself. However, at a time between 1932 and 1934, following the sale of the Opel Works stock in the United States and a purchase of American securities from the funds received, there was a delivery of the stock of plaintiff corporation, which had acquired the American securities, to one Hans Frankenberg, who, the evidence compels me to find was acting in the transaction as agent for Wilhelm and Marta von

Opel. According to the laws of Germany, the
3380 delivery to Frankenberg resulted in the establishment of a usufructuary interest in favor of Wilhelm and Marta von Opel in plaintiff corporation and all of its assets. In 1935, a waiver of this interest was discussed by Wilhelm von Opel with his then attorney, Dr. Gros, but I find that a waiver was not in fact made. I further find that at the time the Alien Property Custodian vested the American securities which are the subject of this suit, Wilhelm and Marta von Opel continued to hold, without impairment, their usufructuary interest in said stock of plaintiff corporation and the American securities.

A right of usufruct, once established, is under German law an *in rem* right in property. A person having a usufruct in property has a right:

(a) to the enjoyment of the property or, in the case of money or securities, to the income from the securities;

(b) to co-possession of the property together with the person holding legal title to the property;

(c) to a voice in the management of the property insofar as the maintenance and preservation of the usufructuary's rights under subsection (a) above are concerned;

(d) to prevent the sale or disposition of the property as a result of his right to co-possession;

(e) the German Civil Code does not mention whether the usufructuary, for the protection of his income, has any voting rights. In the absence of a decided case the legal commentaries speculate in three different directions. One position is that the title owner has all voting rights and the usufructuary no voting rights whatsoever. The second position is that the title owner has a voting right for all

measures which have nothing to do with income while the usufructuary can vote in regard to income. The third position is that the usufructuary has all the voting rights.

Other rights created by the terms of the agreement dated October 5, 1931, were (a) the right of Wilhelm and Marta von Opel to receive 80% of the income from the American securities; (b) if Fritz von Opel should predecease his parents, or one of them, without leaving legitimate issue, the complete ownership of the securities will revert to Wilhelm and Marta von Opel, or the survivor; and (c) if the parents, Wilhelm and Marta von Opel, should predecease Fritz von Opel, the gift made by the agreement dated October 5, 1931, will be considered as an advancement and be deducted from his share in such property as might be inherited by him or his sister, Mrs. Elinor Sachs, nee von Opel, or in case of her prior death, by her issue.

At all times involved in this suit, Wilhelm and Marta von Opel were citizens of Germany and "enemies", as defined by the Trading with the Enemy Act. Their
3381 daughter, Mrs. Elinor Sachs, is a native of Germany presently residing in Switzerland. In November, 1939, Fritz von Opel, formerly a German citizen, became naturalized under the laws of the principality of Liechtenstein, a neutral country during World War II.

In my opinion, the usufructuary and other interests of Wilhelm and Marta von Opel in the stock of plaintiff corporation and the securities vested by the Alien Property Custodian in June and July 1942 compel in law a decision against plaintiff's claim in this suit. By section 32(a) 2E of the Trading with the Enemy Act, an interest in property vested by the Alien Property Custodian will not be returned where the owner is a foreign corporation which at any time after December 7, 1941, was controlled, or 50 per centum or more of the stock was owned, by

any person ineligible to receive return of the vested property. The purpose of the Trading with the Enemy Act was to reach enemy interests which masqueraded under innocent fronts and where securities or other interests are found to be held by a neutral but under circumstances constituting enemy taint, return of the property after vesting by the Alien Property Custodian will be barred.[2] What is necessary to be proved to constitute enemy taint was left undecided by the Supreme Court. We are called upon to decide this question in the present case.

In reaching a determination of enemy taint, the Court will look not only to circumstances which indicate enemy ownership or control, but also to connections or associations with enemy interests. It seems to me the usufructuary interests of Wilhelm and Marta von Opel and the contingent interests which they, their daughter or her issue, owned in the vested securities pursuant to the provisions of the agreement of October 5, 1931, and the delivery of the stock of plaintiff to Wilhelm and Marta von Opel's agent, constitute such substantial enemy taint as to bar recovery by plaintiff. But there is further evidence of enemy taint. The circumstances surrounding the Liechtensteinean citizenshp of Fritz von Opel, the sole remaining owner of interest in the vested property, are not without significance. It is conceded Fritz von Opel has technical status as a citizen of Liechtenstein, and for the purposes of this suit, it may be conceded his citizenship in that country is not open to collateral attack. But

3382 where, as in the case, the vested property is found to be owned by different parties, some of whom clearly are enemies and the sole remaining one of whom is a neutral, it seems proper in a determination of enemy taint of the property, to inquire into possible enemy tendencies of the neutral.

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2 *Clark v. Uebersee Finanz Korporation*, 332 U. S. 480, 485.

Fritz von Opel was born in Germany in 1899 and until 1929 lived in that country, together with his family, who were prominent industrialists known not only in Germany but in other parts of the world. Fritz von Opel achieved widespread distinction in sports in Germany and participated in its behalf in international events. While after 1929 he spent a large part of his time out of Germany, his roots remained firmly planted in that country. It was not until November of 1939, after World War II had begun, that Fritz von Opel took any steps to change his citizenship. At that time, he went through proceedings to become a naturalized citizen of the principality of Liechtenstein. He paid $10,000 to obtain this citizenship and signed certain formal documents. However, he never has been in Liechtenstein more than a few hours at any one time; his visits have been few and in each instance of short duration; and he has never established a place of abode there. He never has taken an oath of allegiance to Liechtenstein or formally renounced citizenship in Germany. In technical form Fritz von Opel is a citizen of a neutral country, but I find beyond doubt that between 1939, when he became a naturalized citizen of Liechtenstein, and 1941, when war was declared by the United States, he had a continued interest in the welfare of and sympathy for Germany.

There is an additional circumstance in this case which of itself perhaps would not prevent recovery by plaintiff in this suit, but which with the other facts of the case tends to indicate enemy taint. The evidence shows that plaintiff at all material times in this suit owned complete stock interest in Transdanubia Bauxite, A. G., a mining corperation in Hungary. On December 13, 1941, Hungary formally became an enemy of the United States. Transdanubia Bauxite, A. G., mined bauxite, an essential ingredient in the production of aluminum. Before the war, it is clear that part of the output was shipped to Germany. There is evidence tending to show also that Transdanubia

shipped bauxite to Germany during December, 1941, at or about the time of the declaration of war between Hungary and the United States. In November, 1939, Fritz von Opel, in response to a letter from Giulini Brothers, of Germany, requesting his service in getting the production in the mines resumed, went to
3383 Hungary "to speed up production in the bauxite mine". The letter to Fritz von Opel stated in part, "you would do meritorious service for the raw material supply of the German aluminum industry and the entire war economy of Germany if you would tackle with all your energy the resumption of production in the mines". In addition, during 1939 plaintiff guaranteed a loan of 32,000 Swiss Francs ($7,000) to Transdanubia Bauxite, A. G., which loan was extended at quarterly periods until November 17, 1942, when plaintiff was advised that its collateral had been released. While it is true there is no showing that plaintiff executed any control over its subsidiary after December 1941, it appears plaintiff never took affirmative steps to sever its relations with Transdanubia. Thus plaintiff had an interest in and an association with an enemy corporation during World War II which apparently supplied war materials to the enemies of the United States.

From what has been stated, it would be difficult in my opinion to find a stronger case of enemy taint in vested property short of full ownership by an enemy than exists in this case. The neutral aspect of ownership in the property is insignificant and it seems to me the plain intent of the Trading with the Enemy Act would be defeated by ordering a return of the vested securities.

During the oral argument of this case, while counsel for the defendant was presenting his contentions with regard to the claim of existence in favor of Wilhelm and Marta von Opel of a usufructuary interest in the vested properties, plaintiff's counsel interrupted to suggest that granting the Court should find such interest existed at

the time of vesting, nevertheless since Fritz von Opel, a neutral, had a well defined separate interest which might be determined by the Court, he would be entitled to recover to the extent of such interest. This point was enlarged by one of plaintiff's counsel in his rebuttal argument. No such claim is made by the pleadings. This suit was not brought by Fritz von Opel upon a claim of division of interests which he held together with his parents, but was brought by a corporation of Switzerland which claimed to be entitled to a return of the vested American securities, based upon a claim that Wilhelm and Marta von Opel held no interest "directly or indirectly, in whole or in part", in the properties. At the time the case was pretried, when the parties were called upon to state the issues to be litigated and to make any amendments of the pleadings necessary to present new issues, it was agreed the action was to recover property belonging to plaintiff corporation in which there was no enemy interest. Without consent of the defendant, the Court should not at this late time adjudicate an issue where the interest
3384 sought to be established is different from that set forth in the pleadings and where the party plaintiff also is different. Defendant well may desire to present other factual information and develop legal arguments which only partially have been made in this case.

Judgment will be entered in favor of the defendant.

/s/ BOLITHA J. LAWS
Chief Judge

February 21, 1949

Findings of Fact and Conclusions of Law
Filed May 6, 1949

3385 1. Plaintiff, Uebersee Finanz-Korporation, is a corporation organized under the laws of Switzerland, with its principal office and main place of business in Switzerland.

2. Plaintiff owned and held stock of certain corporations located in the United States; these assets were vested by the Alien Property Custodian in June and July of 1942 pursuant to the Trading with the Enemy Act.

3. 97 per cent of the stock of plaintiff corporation is held by Fritz von Opel.

4. Wilhelm and Marta von Opel are the parents of Fritz von Opel and at all relevant times they were nationals and residents of Germany. Mrs. Elinor Sachs, nee von Opel, is the sister of Fritz von Opel and is a resident of Switzerland.

5. Fritz von Opel was a citizen of Germany from birth until November 21, 1939, and as a result of his engaging in competitive activities in Germany his name had, by 1929, become a household word and he enjoyed a prominent position in the esteem of the public.

6. After December, 1929, Fritz von Opel never resided in Germany, but lived successively in the United States, Belgium and Switzerland, where in 1934 he became a Swiss Domicilliary. Between December 1930 and August, 1939 he went to Germany for short visits, totalling about ten per cent of the time.

7. On November 21, 1939 Fritz von Opel was naturalized as a citizen of Liechtenstein; however, the only times

he was ever in Liechtenstein was when he was traveling through it. He has been in the United States since May, 1940. The Liechtenstein naturalization law expressly permits the principality under extraordinary circumstances to waive the condition of residence.

8. Fritz von Opel's naturalization in Liechtenstein was accomplished under a waivef of the usual Liechtensteinean naturalization laws which provide for extensive residence. In connection with obtaining his citizenship, Fritz von Opel paid approximately $10,000, two-thirds to a community and one-third to the principality. The 3386 naturalization laws of Liechtenstein require some payment for acquisition of citizenship by naturalization.

9. Fritz von Opel never took an oath of allegiance to the principality of Liechtenstein and he states as his reason for this that he was too sick to travel at the time he was to take his oath. Under the laws of Liechtenstein, it is within the jurisdiction of the executive or an authority empowered by him to administer the citizenship oath after the state citizenship has been granted. The citizenship oath has only to be taken by male persons of full age.

10. Statements made and acts performed by Fritz von Opel between the time in 1939, when he became a naturalized citizen of Liechtenstein, and 1941, when war was declared by the United States, indicate a continued interest in the welfare of and sympathy for Germany.

11. Both Switzerland and the principality of Liechtenstein were and have remained since December 7, 1941, neutral countries.

12. In 1929 General Motors Corporation purchased 80% of the outstanding stock of Adam Opel A. G., a German

corporation engaged principally in the manufacture of automobiles; 10% of the remaining stock, 600 shares, were owned by Wilhelm and Marta von Opel subject to an escrow agreement with General Motors.

13. In 1931, the economic situation in Germany became very serious and Foreign Currency Controls were becoming more restrictive every day.

14. Both Fritz and Wilhelm von Opel were greatly worried during the late summer of 1931 over the possibility of a financial collapse in Germany and a repetition of the inflation of a decade earlier and both had discussions with associates concerning means of avoiding the danger.

15. On October 2, 1931, Fritz and Wilhelm von Opel were advised by Dr. Hachenburg, one of Germany's leading lawyers, that a valid gift could be made by Wilhelm to Fritz von Opel of the 600 shares of Adam Opel, A. G., stock without violating existing Foreign Currency restrictions.

16. This gift would be valid because Fritz von Opel was at the time a devisen auslander, the term applied by German law to a person not residing in Germany and hence not subject to the German foreign exchange control legislation.

17. Thereafter on October 5, 1931, Wilhelm and Marta von Opel by a deed of gift gave Fritz von Opel, their only son, the remaining ten per cent of the Adam Opel A. G. stock.

18. This was intended to be a gift of part interest of the owners and was not intended to be a sham transaction; however, the primary object of the transaction was to

obtain payment upon sale of the Opel shares in the form of gold or American currency, instead of German
3387 reichsmarks. A second purpose of the gift was to make financial provision for Fritz von Opel. Legal title to the 600 Opel shares passed to Fritz von Opel by the agreement of October 5, 1931.

19. On October 17, 1931, Fritz von Opel, pursuant to the provisions of the escrow agreement of 1929, sold General Motors Corporation the 600 Opel shares which were the object of the gift for American currency and securities.

20. After various intermediate financial transactions, all of the proceeds from the sale of the Opel shares were transferred into Uebersee Finanz-Korporation, plaintiff herein, which is a Swiss holding company acquired for the purpose of holding the proceeds of the sale of the Opel shares.

21. Thereafter, these funds were invested in various corporations and other assets in the United States and elsewhere, including the property vested by the Alien Property Custodian. Subsequently, prior to 1936, these assets were transferred to plaintiff.

22. Since 1935 and at the time of vesting plaintiff corporation owned one hundred per cent stock interest in Transdanubia Bauxite, A. G., a mining corporation in Hungary.

23. During the year 1939 a loan was made by a Hungarian Bank to Transdanubia Bauxite, A. G., said loan being guaranteed by a Swiss Bank.

24. In 1940 the said loan was increased by the Swiss Bank to a total amount of 32,000 Swiss Francs ($7,000).

25. As security for this guarantee, plaintiff corporation had caused the Adler Bank, a Swiss Corporation, to place with the Swiss Bank, 32,000 francs as collateral for the guarantee.

26. At quarterly periods the guarantee was extended by plaintiff corporation through its agent, the Adler Bank. In March, June and September of 1942, Dr. Joseph Henggeler, a director of plaintiff corporation, requested the Adler Bank to cause the Swiss Bank Corporation to extend its guarantee to the Hungarian Bank. On each occasion the requested extension was made.

27. Transdanubia Bauxite A. G. repayed the loan and on November 17, 1942, plaintiff corporation was advised that its collateral had been released.

28. Throughout the war the shares of the Transdanubia Bauxite A. G. were held by plaintiff corporation.

29. The record is bare of any evidence as to whether the shares of Transdanubia Bauxite, A. G., from 1940 through 1945, inclusive, were voted, or, if so, who voted them.

30. After December 7, 1941 plaintiff corporation never took any affirmative steps to sever its relations with Transdanubia Bauxite, A. G.

3388 31. From December 13, 1941, until the end of the war, a state of war existed between Hungary and the United States. During October, November and December, 1941, Transdanubia Bauxite, A. G. shipped bauxite to Germany. By contract executed in March, 1940. Transdanubia Bauxite, A. G. agreed to ship bauxite to Germany until the end of 1942. However, in the spring of 1941 Fritz von Opel refused requests from the officers

of Transdanubia Bauxite, A. G. for additional funds in order that mining operations could be continued and he suggested that the mines be sold or leased. The record does not reflect that the plaintiff corporation or Fritz von Opel received any income from Transdanubia Bauxite, A. G. at any time.

32. Under the terms of the gift agreement dated October 5, 1931, it was agreed that Wilhelm and Marta von Opel should have a usufruct established in their favor.

33. According to the laws of Germany the instrument of October 5, 1931, did not immediately create in Wilhelm and Marta von Opel a usufruct in the property which was the subject of the gift because of the omission in the instrument to provide for an immediate delivery of possession or co-possession of the property to Wilhelm and Marta von Opel and because no such delivery of the property was then made.

34. A valid and complete usufruct is created under German law when (a) the person holding the legal title and the usufructuary agree that a usufruct shall be created and (b) when the person holding the legal title delivers to the usufructuary possession or co-possession of the property.

35. Under German law, valid delivery sufficient to create a usufruct may be brought about by symbolic delivery, as in the case of securities, by the delivery of the key to a safe deposit box in which the securities are placed to the usufructuary or his agent.

36. A usufructuary may follow the ascertainable proceeds of the original property subjected to the usufruct.

37. On or before June 7, 1935, Fritz von Opel placed all but three of the shares of Uebersee Finanz-Korpora-

tion, A. G. in box 1917 at the Schweizerische Kreditanstalt in Zurich and thereafter delivered the key to Dr. Hans Frankenberg.

38. Hans Frankenberg received the key as agent for Wilhelm von Opel and it was delivered to him by Fritz von Opel who understood that Hans Frankenberg represented his father.

39. Hans Frankenberg was made managing director of Uebersee Finanz-Korporation in the spring of 1932 at the request of Wilhelm von Opel, in the form of a suggestion.

40. Thereafter Hans Frankenberg continued to be at all times and still is managing director of Uebersee Finanz-Korporation, and there is abundant evidence
3389 establishing that up to and including 1940 he exercised control over the major policies of the corporation. From 1932 until the date of vesting, Dr. Eugene Meier was President and chief officer of plaintiff corporation. Dr. Meier testified that in the year 1940 plaintiff corporation was without connection with Fritz von Opel or with Hans Frankenberg and that it became necessary for Dr. Meier to have a direct hand in the management of the affairs of the corporation. The Court is not able to find from this testimony the extent to which, if any, Dr. Meier, after 1940, participated in the management of the corporation. The record is bare of evidence that after 1940 Frankenberg exercised control over plaintiff, but the record is also bare of any evidence of a termination of such control. From all of the evidence, including the evidence establishing that Frankenberg did exercise control during the years 1932 to 1940 inclusive, and establishing motive and intent for such exercise of control, and in the absence of any evidence that Frankenberg ceased to exercise such control, the Court draws the inference and finds

as a fact that Frankenberg continued to exercise control over plaintiff corporation until the date of vesting.

41. Hans Frankenberg acted at all relevant times as managing director of Uebersee Finanz-Korporation as agent for Wilhelm von Opel.

42. The delivery of the key constituted valid delivery of possession of the res subject to the usufruct and the usufruct contemplated in the gift of October 5, 1931 there and then came into existence in accordance with the terms of the instrument.

43. Hans Frankenberg, as such agent; from the spring of 1932 until the date of vesting, exercised control over the investments and activities of Uebersee Finanz-Korporation, A. G.

44. Fritz von Opel from time to time, from the spring of 1932 until the date of vesting, engaged in activities in behalf of Uebersee Finanz-Korporation and gave instructions concerning its investments.

45. The activities of Fritz von Opel to a large decree were carried on with the guidance and direction of Wilhelm von Opel, or his agent, Hans Frankenberg.

46. All the vested property, which is the subject of this litigation and which is named in the complaint herein, was, at the date of vesting, owned by Uebersee Finanz-Korporation and had been acquired with funds which had originally been derived from the sale of the 600 shares of Adam Opel, A. G. originally owned by Wilhelm von Opel as hereinbefore found.

47. In March of 1933, Uebersee Finanz-Korporation sought to remove to Switzerland $1,250,000 in gold pieces purchased in New York, but was prevented from doing so by order of an agency of the United States Government.

48. Thereafter, from time to time, until May 25, 1936 when certiorari was denied by the Supreme Court, 3390 Uebersee Finanz-Korporation sought by administrative and judicial means to obtain permission to remove the same gold from the United States.

49. In support of an application for a license to remove the gold an affidavit was filed by Fritz von Opel in which he stated that a usufruct had been created pursuant to the gift agreement of October 5, 1931, that the Uebersee shares had been placed in a safe deposit box and that the key to the box was in the possession of Hans Frankenberg as his father's agent, and he further stated he had bare legal title, plus 20% of the income.

50. This affidavit was a part of the record in later legal proceedings before the United States District Court for the Southern District of New York, the United States Circuit Court of Appeals for the Second Circuit, and the Supreme Court of the United States.

51. In 1935 Wilhelm von Opel discussed the waiver of his right to a usufruct but it was never after its creation waived or abandoned by any statement or act of Wilhelm or Marta von Opel.

52. A right of usufruct, once established, is under German law an *in rem* right in property. A person having a usufruct in property has a right:

(a) to the enjoyment of the property or, in the case of money or securities, to the income from the securities;

(b) to co-possession of the property together with the person holding legal title to the property;

(c) to a voice in the management of the property insofar as the maintenance and preservation of the usufructuary's rights under subsection (a) above are concerned;

(d) to prevent the sale or disposition of the property as a result of his right to co-possession;

(e) the German Civil Code does not mention whether the usufructuary, for the protection of his income, has any voting rights. In the absence of a decided case the legal commentaries speculate in three different directions. One position is that the title owner has all voting rights and the usufructuary no voting rights whatsoever. The second position is that the title owner has a voting right for all measures which have nothing to do with income while the usufructuary can vote in regard to income. The third position is that the usufructuary has all the voting rights.

53. Under the laws of Germany at the date of vesting Wilhelm and Marta von Opel had a usufruct in the property and therefore had the usufructuary rights hereinbefore described. Neither Wilhelm nor Marta von Opel ever demanded or received any income of any nature from the usufruct. After the usufructuary agreement was made on October 5, 1931, plaintiff corporation paid the expenses of a trip to South America and a trip to Hungary made by Wilhelm von Opel, said expenses being charged on the books of plaintiff corporation to Fritz von Opel.

54. The gift agreement of October 5, 1931 also provided that if the parents Opel should predecease Fritz von Opel, the gift should be considered an advancement and be deducted from his share in such property as might be inherited by him or his sister, Mrs. Elinor Sachs,
3391 nee von Opel, nor, in case of her prior death, by her issue.

55. The gift agreement also provided that in the event Fritz von Opel predeceased his parents without leaving legitimate issue, the gift would become void. The stocks or the property substituted for the gift including the income accrued but not drawn would under this condition revert to the parents Opel or the surviving parent.

56. Fritz von Opel is now fifty years old and does not have issue. Wilhelm von Opel died in May, 1948. Marta von Opel is now seventy-four years of age. Elinor Sachs, nee von Opel, is now alive.

Conclusions of Law.

1. Plaintiff is a corporation organized under the laws of Switzerland.

2. Plaintiff is indirectly owned and controlled by enemies within the meaning of the Trading with the Enemy Act.

3. Subsequent to the gift agreement of October 5, 1931 between Wilhelm and Marta von Opel and Fritz von Opel, a valid usufruct was created in Wilhelm and Marta von Opel giving them *in rem* rights in the proceeds of the property transferred, and said usufruct existed in Wilhelm and Marta von Opel at the date of vesting.

4. The circumstances of the ownership and control of plaintiff corporation and the assets vested by the Alien Property Custodian constitute enemy taint of plaintiff, and plaintiff is therefore barred from recovery under Sections 2 and 9(a) of the Trading with the Enemy Act, as amended, as interpreted by the Supreme Court of the United States.

5. The circumstances of the acquisition of Fritz von Opel's Liechtenstein citizenship and his attachment to and

sympathy for Germany and plaintiff's ownership of Transdanubia Bauxite, A. G., which mined bauxite for the benefit of Germany are further evidence of enemy taint within the meaning of Section 2 of the Trading with the Enemy Act and taken in conjunction with the finding of ownership and control as aforesaid of the vested securities by Wilhelm and Marta von Opel, alien enemies, bar recovery of said vested securities.

6. Judgment must be rendered in favor of defendant.

/s/ BOLITHA J. LAWS
Chief Judge

May 6, 1949

Judgment
Filed May 6, 1949

3392 This action having come on for trial before me on December 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 1948 and January 3, 4, 5, 6, 7, 10, 11, 13, 19, 24, 25 and 27, March 16 and April 29, 1949, and having heard the evidence adduced and the arguments of counsel, and the Court, after due deliberation, having filed its findings of fact and conclusions of law, NOW THEREFORE, it is

ORDERED, ADJUDGED, and DECREED that plaintiff take nothing, and shall not recover anything in this action, that judgment is hereby entered in favor of the defendant on the merits, that defendant have and recover from plaintiff his costs in this action and that defendant have execution therefor.

Dated, May 6, 1949

/s/ BOLITHA J. LAWS
Chief Judge

Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for a New Trial Filed May 11, 1949

3393 The plaintiff herein has filed a motion for a new trial on the basis of allegedly newly discovered evidence, which evidence is in the form of an affidavit by one Eleonore Firnhammer. The defendant opposes this motion upon the following grounds:

1. The purported evidence contained in the affidavit, if offered as testimony, would be inadmissible as hearsay.

2. The moving papers do not establish that the purported evidence is newly discovered.

3. The purported evidence is purely cumulative and corroborative.

4. Plaintiff has failed to exercise due diligence in obtaining this purported evidence and in filing this motion.

5. The purported evidence, even if admissible, is not direct proof of a waiver of the usufruct by Wilhelm and Marta von Opel.

POINT I

The purported evidence contained in the affidavit, if offered as testimony, would be inadmissible as hearsay.

The purported evidence which forms the basis for the motion now before this Court is contained in the affidavit of Eleonore Firnhammer, annexed to the moving papers.

It may be presumed from this affidavit that Mrs. 3394 Firnhammer, if called as a witness, would testify to the statements of Wilhelm von Opel, attributed to him in her affidavit. These statements of Wilhelm von Opel, if presented to the Court in the form of testimony by Mrs. Firnhammer, are clearly hearsay evidence.

In order for the plaintiff to succeed in changing the Court's finding as to waiver in this action, the plaintiff must prove by a preponderance of the evidence that Wilhelm von Opel and Marta von Opel in fact waived their usufruct which they acquired pursuant to the gift agreement of October 5, 1931. The testimony of Mrs. Firnhammer as to statements made by Wilhelm von Opel is only admissible at best to prove the fact that such statements were made and is in no way probative of the truth of those statements or of the fact that a waiver was or was not made. The mere fact that Wilhelm von Opel may or may not have made such statements is not in itself sufficient to prove that Wilhelm von Opel and Marta von Opel in fact waived their usufruct. That such purported evidence as the plaintiff now proffers is hearsay, is shown by V *Wigmore on Evidence* (3rd ed., 1940) section 1361, in which it is said:

> "The only question, then, can be whether this *assertion of B, reported by A,* is admissible as evidence of the event X, asserted by B to have occurred. It is clear that what we are now attempting to do is to *prove event X by B's assertion;* * * * It is these extra-judicial testimonial assertions which the Hearsay rule prohibits.'" (Italic as in original text.)

Adopting Professor Wigmore's statement of the hearsay rule, it is apparent that plaintiff may not prove an event, namely the waiver, by the testimony of Mrs. Firnhammer as to what was said by Wilhelm von Opel. It is, of course, significant in this connection that there is ab-

solutely no testimony in the record of this case by Wilhelm or Marta von Opel that they ever waived their usufruct under the gift agreement.

The purpose of the hearsay rule is, of course, to prevent the admission in evidence of extra-judicial statements of a person who is not before the court, whose demeanor and credibility are not subject to observation by the court, and who is not subject to cross-examination. The plaintiff now seeks to accomplish, by the evidence proffered, the precise result which the hearsay rule is designed to
3395 prohibit. It seeks to place before the Court extra-judicial statements of Wilhelm von Opel, who cannot testify in person and is not subject to cross-examination and who, when he did testify in this action, uttered not one single word about a waiver of his usufruct.

Nor would such testimony be admissible under any of the recognized exceptions to the hearsay rule. Not only is the proffered testimony hearsay, but in addition, it is also subject to the objection that the declarations sought to be proved are purely self-serving. The affidavit of Mrs. Firnhammer states several times that Wilhelm von Opel told her that he was involved in criminal proceedings brought by the German government involving the usufruct which he and his wife held and that "he was afraid that the Nazis might use what he called the niessebrauch provision of the gift agreement to jump on him anew year after year." It is clear from this statement that if Wilhelm von Opel ever made any statements such as are attributed to him by Mrs. Firnhammer, which the defendant does not concede, the only purpose which Wilhelm von Opel could have had in making such statements was to prevent the German authorities from jumping "on him anew year after year," and were not designed to relinquish the property rights which Wilhelm von Opel had. Under these circumstances, the proffered evidence by Mrs. Firnhammer is also inadmissible upon the ground that it is evidence only of self-serving declarations.

The statements allegedly made in August, 1947 by Wilhelm von Opel are further objectionable upon the ground that they were made *pendente lite*. While statements made *ante litem motam* may, under certain circumstances be admissible, statements made during the course of litigation in which the declarant is interested are not admissible and are self-serving. The interest of Wilhelm von Opel, living in post-war Germany, in seeking to assist in securing the return of the vested property from the United States is so apparent that it needs no further elaboration.

The purported evidence contained in the affidavit of Mrs. Firnhammer, if offered as testimony, would there-
3396 fore be inadmissible as hearsay evidence and as evidence of self-serving declarations. In order for plaintiff to prevail upon this motion there must be a showing that the plaintiff has new evidence which was not available at the time of the trial. Evidence which is inadmissible as hearsay and self-serving is, of course, no evidence at all, and, consequently, no ground exists upon which the Court could properly grant this motion for a new trial.

POINT II

The moving papers do not establish that the purported evidence is newly discovered.

Even if it be assumed for the purpose of argument that the testimony of Mrs. Firnhammer would be admissible, which of course defendant does not concede, defendant submits that it has not been established that the evidence proffered is newly discovered within the meaning of Rules 59 and 60(b), of the Rules of Civil Procedure. The courts have held that five requirements must be met by a moving party before a court will exercise its discretion in allowing a new trial on the ground of newly discovered evidence. These requirements are: that the evidence be

discovered after the end of the trial; that facts are alleged which show due diligence in attempting to discover such evidence; that the new evidence is not merely cumulative or corroborative or for the purpose of impeaching; that the evidence is material; and that there is a probability that the evidence, if admitted, would lead to a different result.

Marshall's U. S. Auto Supply Inc. v. *Cashman*, 111 F. (2d) 140 (C. C. A. 10, 1940) cert. den. 311 U. S. 667 (1940);
Prisament v. *United States*, 96 F. (2d) 865 (C. C. A. 5, 1938).

Defendant contends that the first requirement set forth above, namely, that the evidence be newly discovered has not been met. Upon reading Mrs. Firnhammer's affidavit, the Court will note that there is absolutely no statement by her as to when she first reported the alleged statements of Wilhelm von Opel to either Fritz von Opel or
3397 Margot von Opel. This omission might not be so glaring if the moving papers contained an affidavit by either Fritz von Opel or Margot von Opel, or both, as to when these alleged statements were first reported. It is further extremely striking and interesting to note the manner in which plaintiff attempts to show that these alleged statements by Wilhelm von Opel were not known until after the trial of this action. The motion signed by plaintiff's attorneys states that Fritz von Opel, who has had a strained relationship with Mrs. Firnhammer, told plaintiff's attorneys that Margot von Opel had been told of these alleged statements by Mrs. Firnhammer. Thus, the moving papers are in fact based upon a double hearsay assertion by plaintiff's attorneys that Margot von Opel told Fritz von Opel who told plaintiff's counsel of the existence of this purported evidence after the trial. Defendant submits that the Court is entitled to give consid-

erable weight to the manner in which plaintiff seeks to establish that the purported evidence is newly discovered and, particularly, to the absence in the moving papers of any statement of the witness herself as to when she informed the interested parties. Plaintiff seeks to have this Court grant a new trial in an important and involved matter which took several weeks of testimony of witnesses, based upon little more than the hearsay declarations of Fritz von Opel, who, in the light of the Court's findings, must be deemed a witness of at least questionable credibility. Such a showing in defendant's view is hardly sufficient to justify the extraordinary relief which plaintiff seeks.

Defendant, however, does not merely rely on the insufficiency of the moving papers as outlined above. Defendant respectfully calls the Court's attention to the signed statement of Mrs. Firnhammer, annexed hereto as Appendix A, which statement was obtained by a Special Agent of the Federal Bureau of Investigation. In that statement, Mrs. Firnhammer asserts that she came to the United States in November, 1947; that she renewed her acquaintance with Fritz and Margot von Opel during 1948 and saw those persons several times; and that this case was discussed by Fritz and Margot von Opel and others in her presence. She further asserts that, in March
3398 or April, 1949, Fritz von Opel *came to her* and asked her whether she had any knowledge of facts which might make her useful as a witness in this action. She further states, "From the manner in which Fritz von Opel asked me questions, I was aware that he knew that I was aware of the general nature of the case, but he did not know the details of my knowledge of the case." She then made certain statements to Fritz von Opel who prepared the affidavit filed as part of the moving papers. Thus, according to Mrs. Firnhammer, the statement in the moving papers that her knowledge of the case was first discovered in the course of a conversation with

Margot von Opel is not correct. To the contrary, Fritz von Opel sought her out as a possible witness after the Court had rendered its opinion. It is clear from this statement by Mrs. Firnhammer (Appendix A) that Fritz von Opel at least knew that Mrs. Firnhammer did have some knowledge of this case, but he did not attempt to learn the extent of such knowledge until after the Court rendered judgment for defendant. Certainly the plaintiff, or its representative Fritz von Opel, cannot be permitted to proceed to trial on certain evidence and then after the Court has determined that such evidence is insufficient, seek out additional evidence which was available and which was known to be available all the time.

Nor is that all which in defendant's opinion shows a failure to establish that the evidence is newly discovered. The Court's attention is respectfully directed to the second paragraph of Mrs. Firnhammer's affidavit in which she states that over the years she took the place of a daughter, vis-a-vis Wilhelm and Marta von Opel and to her statements in the balance of the affidavit that she saw Wilhelm von Opel repeatedly after 1939 and particularly after the end of the war. Plaintiff now asks this Court to believe that the parties concerned with the prosecution of this action never had any idea that Mrs. Firnhammer, who was on such intimate terms with Wilhelm von Opel, had any knowledge of facts which might be relevant in this controversy. Mrs. Firnhammer states that she saw
3399. Wilhelm von Opel in August, 1947; the record shows that Fritz von Opel was in communication with his father immediately after the end of hostilities in 1945 (Defendant's Exhibit 36); Wilhelm von Opel's deposition was taken in Germany in the first week of September, 1947 and at that time Wilhelm von Opel of course had an opportunity to confer with counsel for the plaintiff. At the same time the deposition of Daniel Gros, who on various occasions had acted as attorney for Wilhelm von Opel, was also taken, and Daniel Gros was subsequently

brought to this country by plaintiff at the beginning of the trial. Yet, according to plaintiff, none of these persons had any idea that Mrs. Firnhammer had any knowledge of facts which might be relevant to this action.

Although plaintiff's attorneys state that Fritz von Opel told them that his relations with Mrs. Firnhammer have been very strained, there is no similar statement with respect to Margot von Opel, his wife, and it is apparent that no strained relations existed with respect to Margot von Opel. Yet, here again, the Court is asked to believe that Margot von Opel, who as late as 1946 was well aware of the difficulties which this usufruct was creating and might create with respect to this very case (R. 2518-2522), never had any idea that Mrs. Firnhammer knew anything about this matter and never reported it to Fritz von Opel or his attorneys, who are also the attorneys for the plaintiff in this action.

On the basis of the foregoing, defendant submits that the plaintiff has wholly failed to establish that the evidence is newly discovered or could not reasonably have been discovered prior to the conclusion of the trial of this action. Having failed to establish that the evidence is newly discovered, the motion should be denied.

POINT III

The purported evidence is purely cumulative and corroborative.

In Point II, *supra*, there has been set forth the five requirements which must be met before a court will exercise its discretion to grant a new trial. The third
3400 of these requirements is that the alleged new evidence is not merely cumulative or corroborative. This requirement has likewise not been met on the instant motion.

The purported evidence proffered by the plaintiff relates solely and exclusively to the issue as to whether Wilhelm

von Opel in fact waived the usufruct which he acquired pursuant to the gift agreement of October 5, 1931. This is not a new issue in this case. On the contrary, it has been one of the most important issues since the beginning of the trial, and the Court specifically requested counsel to discuss this point in their final arguments. On this issue, the plaintiff adduced testimony by Fritz von Opel and by Daniel Gros which sought to show that the usufruct had been waived. The defendant adduced testimony of J. Mason Houghland, Butler P. Crittenden and Rudolf Deku with respect to certain admissions by Wilhelm von Opel and Fritz von Opel which were totally inconsistent with the waiver of a usufruct. In addition, there was received in evidence Defendant's Exhibit 25, a letter from Fritz von Opel to his father, dated December 21, 1936, in which Fritz states that he had been discussing the usufruct for several days and that he had learned that Wilhelm von Opel had been discussing the usufruct with Dr. Frankenberg.

The purported new evidence which forms the basis of plaintiff's motion is nothing more, if admissible at all, than additional testimony on the same issue which has been fully litigated and is therefore merely cumulative and corroborative of testimony previously offered by the plaintiff. It is well settled that a motion for a new trial may not be granted for the purpose of admitting such cumulative and corroborative evidence.

F. W. Woolworth Co. v. *Seckinger*, 125 F. (2d) 97 (C. C. A. 5, 1942);
Prisament v. *United States*, 96 F. (2d) 865 (C. C. A. 5, 1938).

In the *Woolworth* case, *supra*, one of the issues on trial below was the identity of the shoes worn by the plaintiff at the time of the accident. After judgment for plaintiff, defendant moved for a new trial on the ground of

3401 newly discovered evidence. The evidence offered by this motion concerned the identity of the shoes worn by the plaintiff at the time of the accident. The identity of the shoes was one of the major issues at the trial. The motion was denied and on appeal the court held that the denial of the motion was proper and said, at p. 98:

> "One of the principal issues in the case concerned the identity of the shoes Mrs. Seckinger was wearing when the accident occurred. The evidence offered in support of the motion for a new trial likewise dealt with this issue. Construed to its best advantage for the movants, it is clear that this was corroborative of earlier witnesses and designed to impeach the testimony of the plaintiffs. It is well settled that motions for a new trial on the ground of newly discovered evidence must do more than merely seek to relitigate old issues, and cannot be allowed where the new evidence is merely for the purpose of corroboration or impeachment."

In the *Prisament* case, *supra*, a criminal prosecution, a motion for a new trial was filed after judgment on the basis of newly discovered evidence that the defendants had been seen in New York at the time of the robbery in Georgia. The presence of the defendants in New York at the time of the offense had been testified to at the trial through several witnesses. The court denied the motion for a new trial upon the ground that additional evidence tending to show that the defendants were in New York at the time of the robbery was merely cumulative and its denial was sustained on appeal.

The evidence here offered falls precisely within the rule stated in the cases cited. The purported evidence is merely cumulative and corroborative on an issue on which there has been an abundance of testimony and the motion seeks only to "relitigate old issues." Plaintiff recognizes that it must show that the new evidence proffered is not merely

cumulative or corroborative. It seeks to meet this burden, however, by a mere statement of a conclusion to that effect. This is wholly insufficient. Plaintiff also seeks to meet this burden by stating that the alleged new evidence contradicts Finding of Fact No. 51. This on its face shows that plaintiff is merely attempting to "relitigate old issues."

On the basis of the authorities cited, therefore, 3402 even if the testimony of Mrs. Firnhammer were admissible, there would be no proper ground for granting a motion for a new trial and the motion should be denied.

POINT IV

Plaintiff has failed to exercise due diligence in obtaining this purported evidence and in filing this motion.

Of the five requirements which must be met for the granting of a motion for a new trial, stated in Point II, *supra*, the second is that facts must be alleged that show the exercise of due diligence in seeking to discover such evidence. Defendant submits that even if the evidence were admissible there has been no showing of due diligence in seeking to discover the evidence.

The statement of Mrs. Firnhammer, annexed hereto (Appendix A) shows that she had discussed this case with Wilhelm von Opel in Europe as late as 1947, and that this case was discussed in her presence by Fritz and Margot von Opel in 1948. Her statement further shows that immediately after the Court had filed its opinion awarding judgment to the defendant, Fritz von Opel went to Mrs. Firnhammer and asked her whether she had knowledge of any facts which might be relevant. It is thus apparent that Fritz von Opel at least knew all along or had an idea that Mrs. Firnhammer might have knowledge of circumstances which could be relevant in this

matter. Whether or not he advised counsel of the existence of this witness is not stated, but certainly he, who to say the least has a substantial interest in this controversy, cannot now be permitted on behalf of the plaintiff to seek to bolster the case after the cause has been lost. These facts certainly demonstrate that there has been no showing of due diligence to discover material evidence.

The defendant, however, does not rely on these facts alone. The Court is respectfully referred to the statements under Point II appearing on pages 6 and 7 of this memorandum which will be restated briefly here. In the affidavit made a part of the moving papers, Mrs. Firnhammer states that she took the place of Wilhelm von Opel's daughter and that she saw him repeatedly in the 1930's
3403 and after the end of the war. Her affidavit itself discloses that there were discussions with Wilhelm von Opel concerning the usufruct. Fritz von Opel was frequently in Germany before the war and in fact was there almost every year. He was also in communication with his father after the end of hostilities in 1945. Wilhelm von Opel's deposition was taken in September, 1947, and counsel for the plaintiff were, of course, present. In the light of all these facts, the Court is now asked to find that neither the plaintiff or its representatives, nor Wilhelm nor Fritz von Opel, nor plaintiff's counsel, had any idea that Mrs. Firnhammer might be used as a witness in this matter.

Whether or not they were actually aware of Mrs. Firnhammer's knowledge in this action is of course immaterial; the issue on this motion is whether by the exercise of due diligence they should have known of this purported evidence. The exercise of due diligence requires that every effort be made to discover available evidence. To say that in the course of preparation for trial neither plaintiff nor its counsel could, by the exercise of due diligence, have discovered this purported evidence taxes credulity. The plaintiff and its representatives and counsel cannot sit

back and ignore the plain facts which are apparent, including the close relationship between Wilhelm von Opel and Mrs. Firnhammer, and then say that due diligence would not have resulted in the discovery of this evidence. It is incumbent upon parties to litigation and their counsel to explore all possibilities of obtaining evidence and to question all persons who might conceivably have knowledge of the facts. This would certainly include a person sufficiently intimate with Wilhelm von Opel to take the place of his daughter in his affections.

It is particularly significant in this connection to note the statement of the Court on March 16, 1949 when advised of the intention to file this motion on newly discovered evidence. The Court said to counsel for the plaintiff (R. 3178), "You had better labor pretty hard as to why you could not get it before you tried the case." It is apparent that the Court was well aware of the heavy burden of due diligence imposed upon a person seeking a new trial.

3404 There is a further lack of due diligence present here, namely, the failure of plaintiff to use due diligence in filing this motion. The Court's Opinion was filed on February 21, 1949. At that time the Court issued tentative Findings of Fact and Conclusions of Law. On March 16, 1949 a hearing was held before this Court with respect to amendments requested by the plaintiff with respect to such findings and conclusions. During that hearing, at two separate points in the record, Mr. Gallagher, of counsel for the plaintiff, stated to the Court that he was going to file a motion for a new trial on the basis of newly discovered evidence (R. pages 3164, 3178). Obviously, Mr. Gallagher at that time had an idea as to what the newly discovered evidence was, and in fact he stated that he was not yet prepared to file a motion because he did not have the necessary affidavit. Subsequently, on April 29, 1949, a further hearing was held with respect to proposed amendments of the findings and conclusions

and the Opinion of the Court. At this hearing, no one on behalf of plaintiff made any statement to the Court of an intention to file a motion for a new trial. At the conclusion of this last hearing, the findings, conclusions and opinion were finally settled, counsel for the defendant was instructed to have the necessary documents rewritten and the Court stated (R. 3245), "We can try to get it out next week, about Wednesday.", meaning May 4, 1949. Finally, on May 5, 1949 the instant motion was served and filed.

It thus appears that counsel for the plaintiff knew of the existence of this purported evidence at least on March 16, 1949, and yet they permitted more than seven weeks to elapse before filing such a motion. Certainly, a party moving for a new trial has a duty to the Court to file such a motion as soon as the evidence is known. It could hardly have taken seven weeks to obtain an affidavit from a witness who states she is employed in New York City and to prepare a two page motion to accompany such affidavit. This motion for a new trial is addressed to the discretion of the Court. It would seem that the Court should not reasonably be expected to exercise its discretion in
3405 favor of a party who has not exercised due diligence and reasonable speed in bringing allegedly new evidence to the attention of the Court.

On the basis of all of these facts, plaintiff has wholly failed to show that the evidence could not have been discovered with the exercise of due diligence or that in filing this motion they exercised due diligence. For these reasons the motion should be denied.

POINT V

The purported evidence, even if admissible, is not direct proof of a waiver of the usufruct by Wilhelm and Marta von Opel.

The fifth requirement, set forth in Point II, *supra*, which must be met for the granting of a motion for a new trial is that there is a probability that the evidence if admitted would lead to a different result. The purported evidence submitted by the plaintiff, if it were admissible in this action, does not meet this requirement.

First, any evidence as to a waiver of the usufruct by Wilhelm von Opel given by Mrs. Firnhammer is subject to two deficiencies. The testimony in the record of this action shows that even if Wilhelm von Opel and Marta von Opel had sought to waive their usufruct, the usufruct was a right to foreign exchange, the waiver of which required a license under the German foreign exchange laws. Those laws further provided that the absence of such a license rendered any transaction subject thereto null and void. Plaintiff has offered no proof that a license was ever obtained from the foreign exchange authorities, and consequently, the Court would be constrained to hold that a valid waiver was never made.

The second deficiency is that the affidavit of Mrs. Firnhammer deals only with alleged declarations of Wilhelm von Opel. Nowhere in her affidavit is it stated that she knows of any declarations by Marta von Opel, the wife of Wilhelm von Opel. The Court will recall that the evidence established that the gift agreement related to a gift of property held as community property by Wilhelm and Marta von Opel, and that the usufruct ran to both Wilhelm and Marta von Opel. Therefore, the testimony by
3406 Mrs. Firnhammer as to declarations by Wilhelm von Opel would not dispose of the usufruct, since even on the basis of this motion, there is no new evidence that

Marta von Opel ever made any attempt to waive, or made any declarations concerning, a waiver of the usufruct. Consequently, the purported evidence is totally insufficient and could not lead to a different result in this action.

Second, an examination of Mrs. Firnhammer's affidavit attached to the moving papers, discloses that nowhere does she state that Wilhelm von Opel ever said that he had waived the usufruct. The first alleged conversation is said to have taken place in 1934 or 1935 and that Wilhelm von Opel at that time said that "he didn't need, nor desire, any income from his son." This is not a statement of waiver. It is further significant to note that this statement is followed by a further purported declaration of Wilhelm von Opel that the purpose of the usufruct had been "to educate his newly married son to live well within his means." This last alleged declaration clearly shows that Wilhelm von Opel intended to and did retain legal control over the property and the actions of his son relating thereto. The next alleged declaration of Wilhelm von Opel is stated to have been made in the summer of 1937 at which time Wilhelm told Mrs. Firnhammer that "his lawyer had succeeded in bringing his negotiations with the German authorities to a favorable conclusion." This statement may be entirely disregarded since it in nowise indicates what negotiations with the German authorities were being discussed and is certainly no proof that a usufruct was waived, in view of the fact the usufruct is not even mentioned. The Court will recall that this record contains several instances in which Wilhelm von Opel was involved with the German authorities, and it can hardly be determined to what this alleged statement refers.

The last alleged statement contained in Mrs. Firnhammer's affidavit is a purported statement by Wilhelm von Opel in August, 1947 at which time he is supposed to have said that the German authorities had recognized that he had abandoned all claims against his son. This

3407 again is no proof of a waiver of the usufruct for again neither "waiver" nor "usufruct" are mentioned. Furthermore, this alleged statement, if it was in truth made, would be entitled to no weight whatsoever and could not change the result of this action, since less than a month thereafter Wilhelm von Opel testified in this action by deposition, at which time he made no statement whatsoever that he had ever waived a usufruct. Certainly, Wilhelm von Opel's own testimony under oath is the best evidence of what he did or did not do, and his failure to state in his deposition that he had ever waived his usufruct must necessarily be deemed controlling.

In any event, even if the reported statements of Wilhelm von Opel were made, there is no declaration imputed to him that he had in fact waived his usufruct. Consequently, since there is no direct proof of a waiver in the affidavit and since there is a complete failure of proof as to any waiver by Marta von Opel or as to any license from the German foreign exchange authorities approving such waiver, the testimony of Mrs. Firnhammer, even if it could be admitted in evidence, could not lead to a change in the result of this action. Plaintiff has therefore failed to meet this requirement for a motion for a new trial and the motion should be denied.

Conclusion

On the basis of the foregoing, it has been demonstrated that the alleged newly discovered evidence is not evidence at all since it is inadmissible as hearsay and self-serving. Further, even if the evidence could be deemed admissible, the plaintiff has wholly failed to fulfill the requirements prerequisite for the granting of a motion for a new trial in that the evidence is not newly discovered; the evidence is merely cumulative or corroborative; no facts are alleged which show due diligence in attempting to discover this

evidence or in filing this motion; and there is no probability that the evidence, if admissible, would lead
3408 to a different result. Upon all these grounds, therefore, defendant respectfully requests that the motion be denied in all respects.

Respectfully submitted,

Dated, May 11, 1949

/s/ DAVID L. BAZELON

David L. Bazelon
Assistant Attorney General

/s/ MYRON C. BAUM

Myron C. Baum
Attorney

/s/ E. ERNEST GOLDSTEIN

E. Ernest Goldstein
Attorney

Attorneys for Defendant
Office of Alien Property
Department of Justice

New York, New York
May 9, 1949

I, Eleonore Dorothea Firnhammer-Hoch, make the following voluntary statement to Harry Kiefer and Michael T. Geary who have identified themselves to me as Special Agents of the Federal Bureau of Investigation. No threats or promises have been made to me and I realize that I have the right to consult an attorney prior to making this statement. I also realize that I do not have to make any statement and that it can be used in a court of law against me and/or others. (E. F.-H.)

I came to the United States on or about November 10, 1947 and entered through the Port of New York.

While I was in Europe, I learned from Geheimrat Wilhelm Von Opel that his son Fritz was involved in a court case in the United States.

About December, 1947, I met Fritz and Margot Von Opel at their home in New York City. This was entirely a social visit. The court case was not discussed.

Thereafter in the spring of 1948, I met Fritz Von Opel (E. F.-H.) on a few occasions. I also met Margot Von Opel late in 1948 when she returned from Switzerland. During these meetings, the court case was mentioned by some of the people present but I never discussed it with either Fritz or Margot Von Opel. They were not interested in my opinion because they thought it was too complicated for me to understand.

About the end of February, 1949, I learned that Fritz Von Opel had lost his court case. I learned this from Margot Von Opel.

In March or April, 1949, Fritz Von Opel called me and asked to see me. I had not seen Fritz for nearly a year. He asked me to come to his apartment in order to speak to me about several things.

At first there was some family conversation. Then Fritz asked me about what his father had said to me in detail. He said that perhaps he could use me as a witness but wasn't sure.

From the manner in which Fritz Von Opel asked me questions, I was aware that he knew that I was aware of the general nature of the case, but he did not know the details of my knowledge of the case.

I then told Fritz Von Opel what I knew about the case. He took notes during the conversation. Sometime later, Fritz Von Opel telephoned me and asked me to come to his place of residence. Fritz Von Opel gave me a typewritten affidavit to read. I would have preferred to typewrite my own affidavit but because I am an inefficient typist and have no typewriter, we had decided that Fritz Von Opel was to have the affidavit prepared elsewhere.

I read the affidavit which Fritz Von Opel gave me. I returned it to Fritz Von Opel and told him that it was correct. At Fritz Von Opel's suggestion we went to a Notary Public, where I signed the affidavit. Fritz Von Opel then took my affidavit with him.

3410 I have read the above statement consisting of this page and one other page. I now sign this statement to indicate that it is true.

(signed) Eleonore Dorothea Fernhammer-Hoch

Witnessed: Harry Kiefer, Special Agent, FBI, NYC 5-9-49

Michael T. Geary, Special Agent, FBI, NYC 5-9-49

Plaintiff's Memorandum of Points and Authorities and Additional Affidavits in Support of Plaintiff's Motion for a New Trial, Filed May 23, 1949

The defendant herein has opposed the motion hereinbefore filed by the plaintiff for a new trial on the ground of newly discovered evidence and predicates its opposition on several grounds. In answer thereto and for the convenience of the Court, plaintiff will answer the defenses raised by the defendant in the order in which they are set forth in its memorandum.

1. The purported evidence contained in the affidavit of Eleanore Firnhammer, if offered as testimony, is admissible as an exception to the hearsay rule. This exception provides that declarations of deceased persons made while the declarants were in a position to know of the matters stated and which are against pecuniary or proprietary interest are admissible. This rule of law is so well recognized that it needs little if any citation. Case books are replete with statements of the courts supporting this principle. The most pertinent qualification is that the declarant be deceased at the time the statements made by the declarant are to be introduced. In the present matter, as the court well knows, Wilhelm von Opel died in the Spring of 1948, prior to this trial. A further requisite is that statements be made prior to a time when there was any contemplation that they would be subsequently used as evidence. Statements such as Miss Firnhammer's affidavit discloses were made during the middle 30's, particularly in the years 1934, 1935 and 1937, long prior to any time when it was contemplated that the Trading with the Enemy Act would again come into effect by virtue of a war between Germany and the United States. The statements made by Wilhelm von Opel were definitely against his pecuniary and pro-

3412 prietary interests in that Miss Firnhammer states that he considered all claims which he might have had against his son, Fritz von Opel, were gone. For the convenience of the Court, for a very clear enunciation of the rule that testimony of the type contained in Miss Firnhammer's affidavit is admissible as an exception to the hearsay rule, the Court's attention is directed to *McKelvey on Evidence*, 5th Ed., Sections 251 to 259.

2. The moving papers do establish that the purported evidence is newly discovered. Contrary to the statements of the defendant that in Miss Firnhammer's affidavit there is no statement from her as to when she first reported the alleged statement of Wilhelm von Opel to either Fritz or Margot von Opel, the Court's attention is directed to the affidavit of Miss Firnhammer taken on May 9, 1949 by agents of the Federal Bureau of Investigation and attached to Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for a New Trial and marked Appendix A. It is quite clear from a reading of that affidavit that the first time she told any one about her knowledge of the case was subsequent to February, 1949. Plaintiff submits that the defendant is straining the language of Miss Firnhammer's affidavits to endeavor to draw its conclusion that there is nothing to indicate when her statements with respect to her knowledge of the facts of waiver were first brought to the attention of Fritz or Margot von Opel.

3. The testimony sought to be introduced is not purely cumulative and corroborative. The testimony sought to be introduced is, as set forth under point 1, supra, a declaration against interest by Wilhelm von Opel. The witness is a party who has no interest in the proceeding, whose testimony it is submitted must be given serious consideration. It is particularly important in the light of the fact that the court has stated in its opinion that there was no act or statement by Wilhelm von Opel to support a finding that a

waiver had in fact taken place. While the testimony
3413 in some respects is cumulative it is nevertheless submitted that this court in the exercise of its discretion can consider such testimony, for when added to the testimony of Dr. Daniel Gros and the testimony of Director Wilhelm of the Reichbank and also plaintiff's exhibits 96, 97, 98, 99 and 101 it would constitute a preponderance of evidence in favor of a conclusion that a waiver had in fact been made. It would accordingly lead to a different result on that basis and plaintiff requests the court to hear such testimony.

4. Plaintiff has exercised due diligence in obtaining the testimony of Miss Firnhammer. Counsel for the plaintiff, Mr. Walter E. Gallagher, has filed herewith an affidavit setting forth the fact that it was only recently that Miss Firnhammer's evidence or the nature of her testimony was brought to his attention and contrary to the defendant's inference this is not the witness whose testimony was being considered when Mr. Gallagher stated to the Court in March that he intended to file a motion for a new trial predicated on newly discovered evidence. This Court is well aware of the norm in business and personal relationships and that when there are strained family circumstances, such circumstances pose tremendous difficulties even in ordinary situations let alone when exercising due diligence in seeking evidence. This is very politely put by Miss Firnhammer when she states in reference to Fritz and Margot von Opel (Appendix A) "They were not interested in my statement because they thought it was too complicated for me to understand." It is further submitted that prior to and during the time of the trial the documents, plaintiff's Exhibits 96, 97, 98, 99 and 101, together with the testimony of Director Wilhelm and Dr. Daniel Gros concerning said documents, would lead counsel and it is submitted any other party exercising due diligence to the conclusion that a waiver had been clearly shown and no other evidence would

be needed. However, the Court having apparently, because of other circumstances, some doubt in this regard,
3414 found to the contrary. It is believed that the testimony of Miss Firnhammer would dispel any doubts in the Court's mind and affirm the testimony hereinbefore elicited thereby adding up to a preponderance of evidence for the plaintiff on this issue.

5. The proposed evidence is direct proof of a waiver by Wilhelm or Marta von Opel. Under the converse of this point the defendant breaks down its argument into two points: 1. That a license was required under German law. Without arguing this point again, inasmuch as the plaintiff through its experts has shown to the contrary, it is suggested that if the Court were to grant the motion for a new trial and arrived at a finding that a waiver had in fact been made, it would then be apropos for the Court to hear further from plaintiff's and defendant's experts with regard to the applicability of Swiss law and not German law to this situation. 2. That the affidavit of Miss Firnhammer relates only to the declarations of Wilhelm von Opel and not Marta. This Court is well aware of the fact, as evidenced by all of the testimony appearing in this case, that Wilhelm von Opel was the party making all of the decisions for both he and his wife Marta even though they held property on a community basis. In this respect, however, it is suggested to the Court that in addition, if it grants plaintiff's motion for a new trial for the purpose of taking the testimony of Miss Firnhammer, that the Court hear the testimony of Marta von Opel with respect to this waiver. The defendant's endeavor to distort Miss Firnhammer's affidavit on the ground that Wilhelm von Opel had several matters with the German Government is hardly worthy of comment. A reading of her affidavit clearly shows that the problem Wilhelm von Opel was discussing with her was the problem of the niessbrauch and that is the reason he had retained an attorney, Dr. Gros, and it was Dr. Gros who had succeeded in bringing negotiations with the German

authorities to a favorable conclusion, namely affirmation of his position that he no longer had any claim against his son. The defendant further endeavors to make a point of the fact that at the time his deposition was taken
3415 Wilhelm von Opel was not questioned with respect to the waiver of the usufruct. The Court will recall that Mr. Burling endeavored to make much of this point during argument and went so far as to deliberately state that the entire story was made up by Fritz von Opel shortly before the trial. The absurdity of that statement and the failure of counsel for the defendant to thoroughly question Wilhelm von Opel as to any phases of this case as to which they took a different position from the plaintiff and now seek to place the burden of their shortcomings on the plaintiff is clearly manifest from a reading of the affidavits of Dr. Heinrich Kronstein and Mr. Richard J. Connor, which are attached hereto and which contain therein excerpts from statements of Fritz von Opel and Dr. Hans Frankenberg taken under oath by the Alien Property Custodian during 1946, long prior to the taking of the depositions in Wiesbaden.

Conclusion

On the basis of all the foregoing, it is submitted that this Court acting in equity should exercise its discretion and grant the plaintiff's motion for a new trial, hear the testimony of Miss Firnhammer and if the Court so desires, the testimony of Marta von Opel and thereafter, if the Court feels the plaintiff has by a preponderance of evidence shown a waiver, hear further testimony from the experts with respect to the applicability of foreign law, namely Swiss, to this issue.

Walter E. Gallagher

Christopher T. Boland

Attorneys for Plaintiff

CITY OF WASHINGTON,
3416 DISTRICT OF COLUMBIA, *ss.*:

AFFIDAVIT

I, WALTER E. GALLAGHER, having been first duly sworn do on oath depose and say:

In Point 4 of the Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for a New Trial, the defendant page 12 of said memorandum makes reference to a statement that I made to the Court at pages 3164, 3178, to the effect that I intended to file a motion for new trial on the ground of newly discovered evidence. The defendant infers from this statement that the evidence to which I referred was the testimony of Eleonore Firnhammer-Hoch whose affidavit was filed in support of our Motion for New Trial.

I state quite categorically that this witness and her testimony is not the newly discovered evidence to which I made reference during the course of my previous appearances in this matter. That testimony was testimony of an entirely different person. After investigation I concluded that the evidence to be elicited would not add any material element to the plaintiff's proof and accordingly determined not to use this testimony as a predicate for a motion for new trial.

The existence of Miss Firnhammer-Hoch and the nature of her testimony was not brought to my attention until very recently, and as soon as I had an opportunity to check into the contents of that testimony I requested that an affidavit be obtained from her and filed it with this court in support of our Motion for New Trial, acting with full diligence to the best of my ability.

Accordingly, I wish to point out that the inference
3417 that the Defendant endeavors to draw as to laches on my part with respect to this witness' testimony is completely unfounded.

(Signed) WALTER E. GALLAGHER

WALTER E. GALLAGHER

CITY OF WASHINGTON,
3418 DISTRICT OF COLUMBIA, ss.:

AFFIDAVIT

I, RICHARD J. CONNOR, having been first duly sworn do on oath depose and say:

As an associate of the law offices of Gallagher, Osheroff, Connor and Butler, 821 Fifteenth Street, N. W., Washington, D. C., I have acted as attorney for the Uebersee Finanz-Korporation, A. G., since the year 1945. In 1946, in cooperation with the office of the Alien Property Custodian, I agreed to the taking of the testimony of Mr. Fritz von Opel under oath in New York City on October 17, 1946 without the formality of subpoena or deposition provided for.

At that time during the course of the taking of the testimony of said Fritz von Opel and one Dr. Hans Frankenberg, the following testimony was elicited:

By Mr. von Opel—pages 56-60 of official transcript:

"Q. Well, as I understand it, according to your view, your father retained nothing. Why didn't he just give you the shares outright, rather than have this agreement? A. He wanted, so to say, protection in case, if he would get what we call—How do you say it?—if he would become destitute, he then wanted a legal claim on me.

Q. Now, however, as you point out, he actually had no claim because he had not pursued his rights under the agreement? A. Yes, sir; there never was any "niessbrauch" established. All my father had was a claim against me personally; and this claim he renounced in the middle thirties.

Q. Can you fix it any better than that; that is, as to the year? A. In 1935 I offered my father to establish

the "niessbrauch" right. That would have meant that I had to transfer to him the 100 shares of Uebersee stock, and also, my claim against the Uebersee amounting to about 11,000,000 Swiss francs.

My father refused to have anything to do with it for various reasons, the main reason being that there was a very strict Foreign Exchange Law in Germany, and my father thought he should not have any dealings under those Foreign Exchange Regulations.

3419 The breach of some of them was punishable by death.

It was a very strict and ruthlessly-enforced law. That is the reason that he gave up not only the "niessbrauch", which he never possessed, but also any claim he might have had against me.

Q. Now, did he ever write to you outlining this release? A. He went even further than that; he went to the German Government.

Q. Now, do you know which particular Department? A. Oh, yes, sir.

Q. All right. A. He first wrote to the local branch of the Foreign Exchange Control Office in Wiesbaden.

Mr. Worthington: Was it Devisen-Stelle?

The Witness: Yes; a branch of the Devisen-Stelle. I think it was called the Collector of Internal Revenue who was in charge of those local offices.

By Mr. Looney:

Q. Was he located in Frankfort, or Wiesbaden? A. Wiesbaden; from there his request was given to the superiors in Kassel.

From there it was forwarded to the highest authority in Berlin, a man by the name of Reichbank Direktor Wilhelm.

Q. Do you know his first name? Wilhelm's first name? A. No; Wilhelm was his last name.

Q. Do you happen to know the address, by any chance? A. No, sir. He was the head of the Reichbank in Berlin or let us rather say, he was head of the Foreign Exchange Division of the Reichbank. They had several Direktors.

Q. What happened when it got there? A. They, after long and thorough discussion, admitted to my father's lawyer that no "niessbrauch" existed; that my father had no claim against me, but that he had a patriotic duty to get Foreign Exchange for Germany and that they would put him under so-called "political pressure".

Q. Who was your father's lawyer at that time? A. My father's lawyer at the time was Dr. Daniel Gros.

Q. Do you know where he resided, or where he had his office in Berlin? A. His office was in Berlin. It was Budapest Strasse. I guess it was 35, if I remember
3420 correctly.

Q. Do you happen to know his home address? Sometimes they are bombed out and you might find one and not the other. A. He is now living in Wiesbaden, Germany, in the American Zone. He left Berlin.

Q. Did you participate in any of these conferences with the Reichbank? A. No; I only was, of course, in touch with Dr. Gros.

Q. Now, what happened after they suggested to your father that he would produce some foreign exchange. A. They applied political pressure to the person of the local Gauleiter Strenger, in Frankfort.

Q. Do you happen to know his first name? A. No, sir.

Q. Some of them we still have in custody. A. I hope so.

Anyhow, Dr. Gros and I anticipated such moves, and to delay any action, I had offered to have a public accountant firm, like Haskins & Sells, check into my financial situation.

I was sure I had no liquid assets, but the obligations; but I tried to forestall any tough actions by way of the local Gauleiter. But the Reichbank did not accept the offer, and nothing came out of it.

Q. Now this letter which your father wrote, which originated at Wiesbaden, did he ever receive any answer from the Reichbank. A. Dr. Gros was ordered to appear in Dr. Wilhelm's office in the summer of 1937; and there Mr. Wilhelm told him that they had no legal rights, but that they would apply political pressure. They did not give that in writing to Dr. Gros, but Dr. Gros in turn, confirmed the contents of the discussion in a letter to Mr. Wilhelm.

Q. Did anything further happen after that, in connection with this request? A. No.

Q. Did your father ever have to pay anything to the Reichbank? A. No; they were after foreign exchange. My father had no foreign exchange, and he could not pay and he did not pay anything."

By Dr. Frankenberg, pages 41 to 43 of official tran-
3421 script:

Q. And you say that somebody imposed a fine on Wilhelm because of his interest in the usufruct, just so much as you remember of it? A. I do not know whether the fine was in connection with the usufruct, or much more with the fact that the Nazis minded very much that he turned over such a large amount of foreign funds to his son; and they wanted him to recuperate part of it, or whatever it was, or to cause or induce his son to give some part of it back, or something like that. That I would not remember; but Fritz would remember that better than I, I guess. What I do know is finally he received the permission of the Reichbank to renounce

the gift, this usufruct agreement; and that was very hard to get, and he got it.

Q. Now, do you know, would that Reichbank be some special branch? A. At Berlin.

Q. At Berlin? A. In charge was—Fritz tried to trace it already—in charge was Mr. Wilhelm of the Reichbank.

Q. Mr. Wilhelm? A. Wilhelm, who unfortunately died. But furthermore, there was in charge his lawyer, who still is alive, and who can testify to this effect.

Q. Who is that? A. That is Mr. Daniel Gros.

Q. Where does Mr. Daniel Gros live, as you knew it last? A. I think he is in Berlin.

Q. In Berlin? A. Yes.

Q. You think I will be able to locate all these people after I get over there. A. Sure.

Q. But if I know the names and the people and the events, it is much easier to find them? A. I am sure everybody will be delighted if you could do so.

Q. So that the records of the Reichbank in Berlin for 1936 should reflect this transaction. A. It was not any transaction, I mean, you see, they just gave an opinion I would say, an opinion to the effect that he has no—they permitted him to state that he has no income out of the gift agreement whatsoever, and so on and so forth.

Q. Now, in order to get that, he had to pay some-
3422 body something? A. Well, maybe it has to have been done in this particular instance. That I do not recall. But anyhow, I think this man Gros, he can produce some facts regarding negotiations with the Reichbank.

Q. Do you remember his first name—Mr. Wilhelm? A. No, Wilhelm is the last name of the Reichbank man who died.

Q. Daniel? A. Daniel Gros.

Q. Have you any idea where he lives, or his place of business? A. Fritz will know that."

The portions of the statements taken on October 17, 1946 by the Office of the Alien Property Custodian which are set forth above show clearly that the Department of Justice was on full notice that the Uebersee Finanz-Korporation would take the position that Wilhelm and Marta von Opel had waived and terminated all of their rights in connection with a certain gift agreement dated October 5, 1931 between Wilhelm and Marta von Opel on the one hand and Fritz von Opel their son, on the other.

During the course of the taking of the depositions at Wiesbaden, Germany in September, 1947 Dr. Daniel Gros, an attorney representing Mr. Wilhelm von Opel, testified in connection with the waiver of Wilhelm and Marta von Opel of their interest in the proceeds of the gift of October 5, 1931. Dr. Gros testified concerning Plaintiff's Exhibits Nos. 96, 97, 98, 99, 100, 101. These exhibits clearly establish the steps taken by Wilhelm and Marta von Opel through their attorney Dr. Daniel Gros to effectuate a waiver of their interest in the proceeds of the gift. Depositions of Wilhelm and Marta von Opel, among others, were also taken in Wiesbaden on or about September 5, 1947. I believe Wilhelm von Opel was present at all times during the taking of depositions in Wiesbaden in connection with the present case. The Department of Justice was represented by Mr. Myron C. Baum and Mr. Joseph Laufer who cross-examined both Wilhelm and Marta von Opel as well as Dr. Daniel Gros.

The circumstances and conditions under which the
3423 Wiesbaden depositions were taken were extremely difficult from the standpoint of accommodations, transportation, court reporting, etc. Many documents were identified during the course of these depositions. I did not believe it necessary to review the testimony of Mr. Fritz von Opel or Dr. Hans Frankenberg for there was no doubt

in my mind as counsel, that the Government had been clearly apprised of the fact that a renunciation or waiver of all the rights of Wilhelm and Marta von Opel was an issue which would be raised by Uebersee in the trial of the matter. The Department of Justice representatives had ample opportunity to interrogate both Wilhelm and Marta von Opel in this respect. If there was any doubt in their minds as to the facts set forth in the transcript of September, 1946 hereinbefore referred to or as to the facts set forth in Plaintiff's Exhibits 96, 97, 98, 99, 100, 101, either Mr. Laufer or Mr. Baum had ample opportunity to interrogate Wilhelm or Marta von Opel. Both parties were available at all times for such interrogation and as previously stated I believe Mr. Wilhelm von Opel was present at all times during the taking of the testimony in Wiesbaden. I know that Wilhelm von Opel was present during the taking of the testimony of Dr. Gros with respect to Exhibits 96 through 101 above mentioned.

(Signed) RICHARD J. CONNOR

RICHARD J. CONNOR

3424 CITY OF WASHINGTON,
DISTRICT OF COLUMBIA, *ss.*:

AFFIDAVIT

I, Dr. Heinrich Kronstein, having been first duly sworn do on oath depose and say:

I was retained by the Uebersee Finanz-Korporation, A. G. in the year 1947 to serve as an interpreter, translator and German law expert. As part of my services I traveled to Germany in the company of Mr. Richard J. Connor, Counsel for the Uebersee Finanz-Korporation, A. G., and participated in the taking of depositions in Wiesbaden, Germany on September 5, 1947, et seq.

Prior to my trip in the company of Mr. Connor to Germany, statements had been taken under oath by the Office of the Alien Property Custodian from Mr. Fritz von Opel and Dr. Hans Frankenberg, in New York City on October 17, 1946. I was familiar with the transcript of the statements given by Mr. Fritz von Opel, having read a copy of said transcript. In the course of that proceeding as the transcript reflects, there appears the following language:

"Q. Well, as I understand it, according to your view, your father retained nothing. Why didn't he just give you the shares outright, rather than have this agreement?

A. He wanted, so to say, protection in case, if he would get what we call—How do you say it?—if he would become destitute, he then wanted a legal claim on me.

Q. Now, however, as you point out, he actually had no claim because he had not pursued his rights under the agreement?

A. Yes, sir; there never was any "niessbrauch" established. All my father had was a claim against me

personally; and this claim he renounced in the middle thirty's.

Q. Can you fix it any better than that; that is, as to the year?

A. In 1935 I offered my father to establish the "niessbrauch" right. That would have meant that I had to transfer to him the 100 shares of Uebersee stock, and also, my claim against the Uebersee amounting to about 11,000,000 Swiss francs.

My father refused to have anything to do with it for various reasons, the main reason being that there was a very strict Foreign Exchange Law in Germany, and my father thought he should not have any dealings under those foreign Exchange Regulations.

3425 The breach of some of them was punishable by death. It was a very strict and ruthlessly enforced law. That is the reason that he gave up not only the "niessbrauch", which he never possessed, but also any claim he might have had against me.

Q. Now, did he ever write to you outlining this release?

He went even further than that; he went to the German Government.

Q. Now, do you know which particular Department?

A. Oh, yes, sir.

Q. All right.

A. He first wrote to the local Branch of the Foreign Exchange Control Office in Wiesbaden.

Mr. Worthington: What it Devisen-Stelle?

The Witness: Yes; a Branch of the Devisen-Stelle. I think it was called the Collector of Internal Revenue who was in charge of those local offices.

By Mr. Looney:

Q. Was he located in Frankfort, or Wiesbaden?

A. Wiesbaden; from there his request was given to the superiors in Kassel.

From there it was forwarded to the highest authority in Berlin, a man by the name of Reichbank Direktor Wilhelm.

Q. Do you know his first name? Wilhelm's first name?

A. No; Wilhelm was his last name.

Q. Do you happen to know the address, by any chance?

A. No sir. He was the head of the Reichbank in Berlin or let us rather say, he was head of the Foreign Exchange Division of the Reichbank. They had several Direktors.

Q. What happened when it got there?

A. They, after long and thorough discussion, admitted to my father's lawyer that no "niessbrauch" existed; that my father had no claim against me, but that he had a patriotic duty to get Foreign Exchange for Germany and that they would put him under so-called "political pressure".

Q. Who was your father's lawyer at that time?

A. My father's lawyer at the time was Dr. Daniel Gros.

Q. Do you know where he resided, or where he had his office in Berlin?

3426 A. His office was in Berlin. It was Budapest Strasse, I guess it was 35, if I remember correctly.

Q. Do you happen to know his home address? Sometimes they are bombed out and you might find one and not the other.

A. He is now living in Wiesbaden, Germany, in the American Zone. He left Berlin.

Q. Did you participate in any of these conferences with the Reichbank?

A. No; I only was, of course, in touch with Dr. Gros.

Q. Now, what happened after they suggested to your father that he should produce some foreign exchange?

A. They applied political pressure to the person of the local Gauleiter Sprenger, in Frankfort.

Q. Do you happen to know his first name?

A. No, sir.

Q. Some of them we still have in custody.

A. I hope so.

Anyhow, Dr. Gros and I anticipated such moves, and to delay any action, I had offered to have a Public Accountant Firm, like Haskins & Seils, check into my financial situation.

I was sure I had no liquid assets, but the obligations; but I tried to forestall any tough actions by way of the local Gauleiter. But the Reichbank did not accept the offer, and nothing came out of it.

Q. Now, this letter which your father wrote, which originated at Wiesbaden, did he ever receive any answer from the Reichbank?

A. Dr. Gros was ordered to appear in Dr. Wilhelm's office in the summer of 1937; and there Mr. Wilhelm told him that they had no legal rights, but that they would apply political pressure. They did not give that in writing to Dr. Gros, but Dr. Gros in turn, confirmed the contents of the discussion in a letter to Mr. Wilhelm.

Q. Did anything further happen after that, in connection with this request?

A. No.

Q. Did your father ever have to pay anything to the Reichbank?

A. No; they were after foreign exchange. My father had no foreign exchange, and he could not pay and he did not pay anything."

3427. On October 17, 1946, Dr. Frankenberg when questioned, testified as follows:

Q. And you say that somebody imposed a fine on Wilhelm, because of his interest in the usufruct, just so much as you remember of it?

A. I do not know whether the fine was in connection with the usufruct, or much more with the fact that the Nazis minded very much that he turned over such a large amount of foreign funds to his son; and they wanted him to recuperate part of it, or whatever it was, or to cause or induce his son to give some part of it back, or something like that. That I would not remember; but Fritz would remember that better than I, I guess. What I do know is finally he received the permission of the Reichbank to renounce the gift, this usufruct agreement; and that was very hard to get, and he got it.

Q. Now, do you know, would that Reichbank be some special branch?

A. At Berlin.

Q. At Berlin?

A. In charge was—Fritz tried to trace it already—in charge was Mr. Wilhelm of the Reichbank.

Q. Mr. Wilhelm?

A. Wilhelm, who unfortunately died. But furthermore, there was in charge his lawyer, who still is alive, and who can testify to this effect.

Q. Who is that?

A. That is Mr. Daniel Gros.

Q. Where does Mr. Daniel Gros live, as you knew it last?

A. I think he is in Berlin.

Q. In Berlin?

A. Yes.

Q. You think I will be able to locate all these people after I get over there.

A. Sure.

Q. But if I know the names and the people and the events, it is much easier to find them?

A. I am sure everybody will be delighted if you could do so.

Q. So that the records of the Reichbank in Berlin for 1936 should reflect this transaction.

A. It was not any transaction. I mean, you see, they just gave an opinion I would say, an opinion to the effect that he has no—they permitted him to state that he has no income out of the gift agreement whatsoever, and so on and so forth.

3428 Q. Now, in order to get that, he had to pay somebody something?

A. Well, may be it has to have been done in this particular instance. That I do not recall. But anyhow, I think this man Gros, he can produce some facts regarding negotiations with the Reichbank.

Q. Do you remember his first name—Mr. Wilhelm?

A. No, Wilhelm is the last name of the Reichbank man who died.

Q. Daniel?

A. Daniel Gros.

Q. Have you any idea where he lives, or his place of business?

A. Fritz will know that."

The portions of the statements taken on October 17, 1946 by the Office of the Alien Property Custodian which are set forth above show clearly that the Department of Justice was on full notice that the Uebersee Finanz-Korporation would take the position that Wilhelm and Marta von Opel had waived and terminated all of their rights in connection with a certain gift agreement dated October 5, 1931 between Wilhelm and Marta von Opel on the one hand and Fritz von Opel their son, on the other.

During the course of the taking of the depositions at Wiesbaden, Germany in September, 1947 Dr. Daniel Gros, an attorney representing Mr. Wilhelm von Opel, testified in connection with the waiver of Wilhelm and Marta von Opel of their interest in the proceeds of the gift of October 5, 1931. Dr. Gros testified concerning Plaintiff's Exhibits Nos. 96, 97, 98, 99, 100, 101. These exhibits clearly establish the steps taken by Wilhelm and Marta von Opel through their attorney Dr. Daniel Gros to effectuate a waiver of their interest in the proceeds of the gift. Depositions of Wilhelm and Marta von Opel, among others, were also taken in Wiesbaden on or about September 5, 1947. I believe Wilhelm von Opel was present at all times during the taking of depositions in Wiesbaden in connection with the present case. The Department of Justice was represented by Mr. Myron C. Baum and Mr. Joseph Laufer who cross-examined both Wilhelm and Marta von Opel as well as Dr. Daniel Gros.

3429 The circumstances and conditions under which the Wiesbaden depositions were taken were extremely difficult from the standpoint of accomodations, transportation, court reporting, etc. Many documents were identified during the course of these depositions. As advisor to Mr. Connor I did not think it necessary to suggest to him that he repeat the same or similar questions to each and every witness. However, it cannot be doubted that the issue of the waiver had been raised or that the Department of Justice had been on notice that such an issue was in the case. It appeared to me that there was no reason why the Department of Justice representatives could not have interrogated both Wilhelm and Marta von Opel in this respect. They were available for such an interrogation at all times.

(Signed) HEINRICH KRONSTEIN

Heinrich Kronstein

Defendant's Additional Memorandum in Opposition to Plaintiff's Motion for a New Trial, Filed May 26, 1949

3430 The plaintiff, on May 23, 1949, has filed a memorandum and additional affidavits in support of its motion for a new trial. Defendant respectfully submits the following in reply thereto:

1. Plaintiff states that the proffered testimony would be admissible as a declaration against interest by Wilhelm von Opel. As stated in defendant's original memorandum, an examination of Mrs. Firnhammer's affidavit clearly demonstrates that these purported statements were made in the context of proceedings against Wilhelm von Opel by the German government authorities, and were thus an attempt by Wilhelm von Opel to relieve himself of any form of liability in such proceedings. As such, statements were clearly self-serving and in no way declarations against interest.

2. The plaintiff still has not established that the purported evidence is newly discovered. Mrs. Firnhammer's statement (Appendix A to defendant's original memorandum) shows that Fritz von Opel, at least, had an idea that the witness might have knowledge of the relevant facts. This statement still stands. Plaintiff now files an affidavit by Mr. Gallagher, its attorney, who says he filed the motion as soon as *he* knew of the evidence.

3431 Plaintiff continues wholly to ignore the fact that the burden of due diligence is on the plaintiff and its representatives and not only on its attorneys. Consequently, any statement by Mr. Gallagher that he exercised due diligence falls far short of a showing that the evidence is newly discovered or that there was due diligence by the plaintiff.

3. Plaintiff admits that the testimony sought to be offered is cumulative and does not deny that it is corroborative of previous testimony (page 3 of plaintiff's memorandum). This, in and of itself, should be sufficient ground for a denial of this motion, since the cases cited in defendant's original memorandum show that one of the requirements which must be met before a motion for a new trial may properly be granted is that the proffered evidence is not corroborative *or* cumulative.

4. Plaintiff seeks to excuse its lack of due diligence by referring to plaintiff's exhibits 96, 97, 98, 99 and 101 as leading anyone to the conclusion that a waiver had been clearly shown. Exhibits 96, 98 and 101 do not speak of a waiver at all, but refer to arguments which had been advanced that no usufruct had ever been created and that the usufruct was therefore legally invalid. Exhibit 97, dated October 8, 1935, states that the parties "*intend* to take action" and "to declare explicitly, in a supplement *to be drawn up* to the deed of gift" that the usufruct was void, but nowhere states that a waiver had been made. Exhibit 99 cited by the plaintiff states as a fact, "The parents have an in personam claim to the establishment of a usufruct." This document is dated February 8, 1936, considerably after any waiver is alleged to have taken place. All these documents were executed while the gold case was pending in this country, in which case plaintiff represented that a usufruct was in existence. Plaintiff can hardly be permitted to be relieved of its failure to use due diligence in the face of such adverse evidence.

5. Defendant, in his original memorandum, pointed out that the purported evidence, even if admissible, would not show a waiver by Marta von Opel, since the alleged new witness does not claim to know of any declara-
3432 tions as to waiver by Marta. Plaintiff seeks to meet this by stating that from all of the testimony in this case, the Court is well aware that Wilhelm von

Opel made all the decisions for his wife. There is no such testimony in this record, nor is there any testimony that, under German law or any other law, Wilhelm von Opel could have waived *property rights* belonging to his wife.

Retreating to a secondary position, plaintiff then states that if this motion is granted, the Court should also hear the testimony of Marta von Opel on this matter. Marta von Opel has testified in this action by deposition, which has been read into the record, and her testimony contains no statement whatsoever as to waiver. Is the plaintiff now seeking to claim that testimony from Marta von Opel as to waiver is newly discovered evidence which would justify a new trial?

6. Defendant in its original memorandum and at the trial pointed out to the Court that neither Wilhelm nor Marta von Opel gave any testimony whatsoever as to a waiver having been made. Plaintiff now makes the disingenuous argument that its failure to elicit such testimony is excused by the fact that the defendant's counsel should have elicited such testimony. Plaintiff is thus asserting that defendant's attorneys should have elicited testimony to attempt to support plaintiff's case. Such a proposition is sufficiently transparent as to require no further comment.

Plaintiff further submits an affidavit by Heinrich Kronstein who states that he acted as advisor to Mr. Connor in taking depositions of Wilhelm and Marta von Opel in Germany. Referring to the absence of testimony from Wilhelm and Marta von Opel as to waiver, Mr. Kronstein makes the following justification, "As advisor to Mr. Connor I did not think it necessary to suggest to him that he repeat the same or similar questions to each and every witness." In other words, plaintiff's advisor is now making the almost incredible assertion that he did not think it necessary to ask Wilhelm and Marta von Opel, the holders of the usufruct, whether they had waived their

usufruct. This is an interesting proposition since
3433 the plaintiff itself had asserted in the Gold case that the usufruct was in existence as late as May 25, 1936. Again, plaintiff is complaining that defendant's attorneys did not attempt to support plaintiff's case, when plaintiff itself failed to do so.

Plaintiff, in its memorandum, has seen fit to go outside the record in this case and to quote at length certain passages from an interrogation of Fritz von Opel conducted informally in 1946. The purpose of this is to show that defendant had knowledge that waiver was an issue in this case. Defendant's previous knowledge as to the issues is, of course, immaterial. In any event, the testimony quoted out of the mouth of Fritz von Opel states that Wilhelm von Opel refused to have anything to do with a usufruct and that a usufruct never existed. Plaintiff also refers to the testimony by deposition of Dr. Gros in Germany which is also not in evidence. If the Court wishes to examine such testimony, it will find that at no place in that testimony did Dr. Gros state that Wilhelm von Opel had waived a usufruct, but referred only to arguments that the usufruct was allegedly invalid. His subsequent actions on this matter, purportedly evidenced by plaintiff's exhibits 96, 97, 98, 99, 100 and 101, which were identified at the time of that deposition, are similarly lacking in probative value, since, as previously pointed out, exhibits 96, 98 and 101 do not refer to a waiver at all, plaintiff's exhibit 97 refers to a waiver to be executed in the future (after October 8, 1935) and plaintiff's exhibit 99 of February 8, 1936 and 100 of March 11, 1936 refer to the *existence* of a claim for the establishment of a usufruct. All of this, of course, is to be read in connection with plaintiff's assertions as to the existence of a usufruct in the Gold case. These assertions completely negate the purported evidence referred to by plaintiff.

7. Defendant respectfully renews his request that
3434 the motion for a new trial be denied in all respects.

Memorandum of District Court Denying Motion For New Trial, Filed June 16, 1949

3435 On May 5, 1949, judgment was entered in the above-entitled cause in favor of the defendant on the merits, with the provision that defendant have and recover from plaintiff costs and have execution therefor. On the same day plaintiff filed a motion for a new trial on newly discovered evidence. On May 9, 1949, defendant filed a motion for an order requiring plaintiff to furnish security in the amount of Three Thousand Dollars for costs which might be awarded to defendant in this case and from an order staying plaintiff from taking further proceedings until such security is furnished.

Plaintiff's motion for a new trial will be denied.

As to defendant's motion to require plaintiff to give security for costs, it appears the Code of Law for the District of Columbia, in giving this Court discretion to require security for costs, deals with a time before, but not after, judgment. While the language refers to serving a notice for security for costs at any time, the remedy provided for not giving such security is by way of non-suit or dismissal of plaintiff's case, which actions may be accomplished only before entry of final judgment. Moreover, if it be granted this Court has discretion to order such security, in my judgment it should not exercise such discretion at this late date. Motion for security for costs accordingly will be overruled.

BOLITHA J. LAWS
Chief Judge

June 15, 1949

Order of Court Denying Motion for New Trial, Filed June 21, 1949

3436 This cause came on to be heard before me on plaintiff's motion for a new trial on the basis of newly discovered evidence and on defendant's motion to require plaintiff to furnish security in the amount of $3,000.00 for the costs which might be awarded to defendant and for an order staying the plaintiff from taking further proceedings in this action until such security is furnished, and after hearing argument of counsel for plaintiff and defendant on said motions and due deliberation having been had thereon, now, therefore, it is

ORDERED that plaintiff's motion for a new trial on the basis of newly discovered evidence be, and the same hereby is, in all respects denied and it is further

ORDERED that defendant's motion to require plaintiff to furnish security in the amount of $3,000.00 for the costs which might be awarded to the defendant in this action and for an order staying the plaintiff from taking further proceedings until such security is furnished be, and the same hereby is, in all respects denied.

DATED, June 21, 1949.

BOLITHA J. LAWS
Chief Judge

No objection as to form.

Walter E. Gallagher
Attorney for Plaintiff

Notice of Appeal, Filed August 12, 1949

3437 NOTICE IS HEREBY GIVEN that the plaintiff, Uebersee Finanz-Korporation, A. G., hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the final judgment entered in this action on May 5, 1949, and from the order denying the plaintiff's motion for a new trial entered in this action on June 21, 1949.

ARNOLD, FORTAS & PORTER

By

Thurman Arnold

1200 Eighteenth Street, N. W.
Washington 6, D. C.

Attorneys for Plaintiff-Appellant
Uebersee Finanz-Korporation, A.G.

Order of Substitution of Defendant, Filed December 8, 1949

3439 On consideration of appellant's motion to substitute J. Howard McGrath, present Attorney General of the United States, for appellee Tom C. Clark in this case, and it appearing that counsel for J. Howard McGrath has consented hereto, It is

ORDERED by the Court that J. Howard McGrath, Attorney General of the United States, be, and he hereby is, substituted as appelee herein in the place and stand of appellee Tom C. Clark.

Per curiam.

Dated December 8, 1949.

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IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 26,453

UEBERSEE FINANZ-KORPORATION, A. G.,

Plaintiff,

—v.—

TOM C. CLARK, Attorney General, As Successor to the Alien Property Custodian,

Defendant.

Washington, D. C.
Wednesday, December 8, 1948.

This case came on for trial at 2 o'clock p.m. today, before Chief Judge BOLITHA J. LAWS.

Appearances:

For plaintiff:

MR. WALTER E. GALLAGHER,
MR. JOHN L. INGOLDSBY, JR., and
MR. CHRISTOPHER T. BOLAND.

For defendant:

MR. JOHN L. BURLING,
MR. MYRON C. BAUM,
MR. JOSEPH LAUFER, and
MR. ERNEST GOLDSTEIN.

45 Mr. Gallagher: If Your Honor please, the depositions we are about to read are a little lengthy; and, for the convenience of the Court, we would like to suggest that Mr. Ingoldsby sit in the witness chair and give the responses to the questions that are put.

The Court: All right.

Mr. Gallagher: I now offer the deposition, in part, of Wilhelm von Opel, of Wiesbaden, Germany, taken in this matter on September 5, 1947, at Wiesbaden, Ger-
46 many.

The Court: Whose deposition is it?

Mr. Gallagher: The deposition of Mr. Wilhelm von Opel, the father of Fritz von Opel.

Mr. Burling: We concede the admissibility of that deposition, Your Honor, on the ground that Mr. Wilhelm von Opel is dead.

The Court: You concede it?

Mr. Burling: I don't concede the admissibility of every part.

The Court: All right.

DEPOSITION OF WILHELM VON OPEL.

49 Mr. Gallagher (resuming reading from deposition):

"September 5, 1947, 10:00 a.m.—

"WILHELM VON OPEL a witness, was called and having been first duly sworn, was examined and testified as follows:

"*Direct Examination*

"By Mr. Connor:"

(Thereupon the reading from the deposition proceeded as follows, Mr. Gallagher reading the questions, and Mr. Ingoldsby, on the witness stand, reading the answers):

"Q. Mr. von Opel, what is your full name?
"A. Wilhelm Albert von Opel.
"Q. Where do you live?
"A. In Wiesbaden.
"Q. How long have you resided in Wiesbaden?
"A. Since 1929.
"Q. Where did you reside before 1929?
"A. In Ruesselsheim.
"Q. That is in Germany, of course?
"A. Between Mainz and Frankfurt where the plant of Opel is.
"Q. How long did you live in Ruesselsheim?
"A. 57 years.
"Q. Where were you born?
"A. In Ruesselsheim.
"Q. In what year?
"A. In the year 1871 on May 15.
"Q. What is your present business?
"A. I have no business any more.
"Q. You are retired?
"A. I am retired but I am a member of several boards of supervisors. I even resigned from five memberships because I was a member of the Party.
"Q. Before you retired from business, what business were you engaged in?
"A. In the Opel plants or works.
"Q. And what was the business of the Opel Works?
"A. The production of sewing machines, bicycles, automobiles and motorcycles.

"Q. What was the name of the firm?

"A. Adam Opel. Later it was called Adam Opel, A.G.

"Q. How long were you connected with Adam Opel, A.G.?

"A. About fifty years.

"Q. Do you know who established or founded Adam Opel?

"A. My father.

"Q. So the firm of Adam Opel was a family enterprise, was it not?

51 "A. Until at the death of my father, my father was the only owner of Adam Opel. He died in 1895. Then we, the sons, became co-owners.

"Q. How many sons became the co-owners?

"A. We were five brothers. As long as the mother was alive she was co-owner together with the five brothers.

"Q. When your mother died, the five brothers became the co-owners?

"A. Yes.

"Q. Was the name of one of those brothers, Fritz Opel?

"A. Yes.

"Q. You also had a son named Fritz von Opel, did you not?

"A. Yes.

"Q. About how old is your son, Fritz von Opel?

"A. He was born in 1899. He is forty-eight years of age.

"Q. Do you know where your son is at this time?

"A. He lives in the United States.

"Q. Do you have any other children?

"A. I have one daughter living in Switzerland.

"Q. You have no other children than this daughter and your son Fritz?

"A. I had a third child, a daughter who died.

52 "Q. What is the name of the daughter who is living in Switzerland?

"A. Elinor.

"Q. What is her present last name?

"A. Sachs but she is divorced and uses her maiden name.

"Q. Where does she live in Switzerland?

"A. Lenzerheide.

"Q. What school was Fritz, your son, educated at?

"A. In Mainz Raelgymnasium.

"Q. And what business or profession was he educated for?

"A. He learned the practical craftsmanship of a turner and mechanic. He graduated from the Raelgymnasium and then graduated from the Technische Hochschule in Darmstadt as an engineer.

"Q. Do you remember about when he graduated from the school at Darmstadt?

"A. About 1924.

"Q. And then did he become connected with the Adam Opel firm?

"A. Yes, then he entered the firm.

"Q. And what was his position or capacity at the firm in 1929?

"A. In 1929 he was an engineer in the firm.

53 "Q. In 1929 some interest in the Opel firm was sold to the General Motors Corporation of the United States, was it not?

"A. Yes.

"Q. Well, just before the sale of an interest in the firm to General Motors, what position did Fritz have with the firm?

"A. A leading position in the firm in the production branch. He was furthermore a member of the Board of Directors.

"Q. Who was president of Adam Opel, A.G., in 1929?

"A. I was.

"Q. What position in the firm did your brother Fritz Opel hold?

"A. My brother was in charge of the construction office of the firm.

"Q. Were any other of your brothers alive in 1929?

"A. When we sold the firm, only two of us brothers were alive, the others died before.

"Q. How many shares of stock were there in Adam Opel, A.G., in 1929?

"A. Only shortly before we sold the firm we transformed this firm into a corporation with a capital of 60,000,000 marks. Each share had a par value of 10,000 marks.

54 "Q. How many shares did you own?

"A. One-fourth. That means 15,000,000 RM per value shares.

"Q. Did your brother Fritz Opel own the same number of shares as you?

"A. Yes.

"Q. And was another quarter of the shares owned by the children of one of your brothers who had died?

"A. Yes. Each branch of the family got by inheritance the same share in stock.

"Q. But there were originally five brothers?

"A. One brother died in the World War in 1916.

"Q. The brother who died in the war left no children?

"A. He had no children and he was not married."

Mr. Gallagher (reading): "Afternoon Session, 1:00 P.M."

(The reading from the deposition continued, Mr. Gallagher reading the questions and Mr. Ingoldsby reading the answers:)

"Q. When he died his share of the firm went to the surviving four brothers?

"A. The brother who died in the war intended to give me his whole share but I insisted that in the interest of the unity of the family every brother receive the same share.

"Q. In 1929 were some of the shares sold to the
55 General Motors Corporation of the United States?

"A. All shares had been sold in 1929 with the exception of 600 shares which I retained and another 600 shares which my brother Fritz retained with a par value of each 10,000 Reichsmarks.

"Q. After 1929 did you make an agreement with General Motors to sell your shares to them?

"A. When the principal sale was made it was agreed that the remaining shares shall be sold too. It was agreed at a certain price in case I insisted on the sale and another price in case General Motors insisted on the sale.

"Q. In other words, you had an agreement which gave General Motors an option to buy at a certain price?

"A. Yes I did.

"Q. And also an agreement that you could compel General Motors to buy at a certain price?

"A. Yes.

"Q. At the time the shares were sold in 1929 did General Motors want you and your brother Fritz to retain some of the shares?

"A. Yes.

"Q. Can you explain why General Motors wanted you and your brother to keep some of the shares?

Mr. Burling: There is an objection to that, your Honor. That calls for an opinion of the witness as
56 to the state of mind of the General Motors officials. How could the witness know how General Motors wanted it?

The Court: Gentlemen, I think in this case, unless the testimony adopts a very remote line, I will hear it all the way through. I think that would be of advantage to Mr. Gallagher in his case, and to you in yours.

In any event, where we get off into any completely remote subject, of course I will deal with it. But where we

come to these little points, like that, I am just as familiar with that point as I can be.

Mr. Burling: I am sure Your Honor is.

The Court: And it doesn't make any imprint on my mind. So you needn't worry about those matters.

Mr. Burling: There is one matter that counsel and I will have to have an argument on, Your Honor.

The Court: You won't reach that tonight, will you?

Mr. Gallagher: I think we will reach that rather soon. It is going to come out of this deposition, Your Honor.

The Court: Within the next ten or fifteen minutes, do you think we will reach it?

Mr. Gallagher: I think we will.

The Court: Then reach up to that point, and then we will stop.

Mr. Gallagher: All right, sir.

57 Mr. Ingoldsby (reading answer to the last question read from the deposition):—

"A. General Motors was very much interested to accomplish that we retain an interest in the firm. I remained chairman of the Board of Supervisors and my brother remained a member of the Board of Supervisors. We helped to further develop their enterprise."

Mr. Gallagher: I now ask to have marked as Plaintiff's Exhibit 3 a photostatic copy of a letter from Wilhelm von Opel to the National City Bank. It is stipulated by the parties that it is a true and correct copy of the letter.

(The photostatic copy of the letter was accordingly marked for identification as Plaintiff's Exhibit No. 3.)

Mr. Gallagher: And I now ask that the German photostat copy be marked as Plaintiff's Exhibit 3-A.

(The copy of the letter in German was accordingly marked for identification as Plaintiff's Exhibit No. 3-A.)

(Resuming from the deposition, Mr. Gallagher reading the questions, and Mr. Ingoldsby the answers):

"Mr. Connor: Mr. von Opel, I will show you a document addressed to the National City Bank and signed by you and ask you to read that if you will. That is, look it over.

"A. Yes.

58 "Q. That is not your written signature, is it, Mr. von Opel?

"A. No, it is not.

"Q. Is this a copy of a letter which you sent to the National City Bank?

"A. I remember that I wrote such a letter.

"Q. Before you sent this letter to the National City Bank you had entered into an agreement for the sale of the shares with General Motors, had you not?

"A. When the principal sale was made my brother and I had been asked to retain a certain interest in the firm. It is provided either in the principal agreement or in a supplementary agreement that we should retain the shares.

"Q. Do you know where the original copies of those agreements are?

"A. I already looked for this contract. I had to evacuate the office in which I worked for a long time within a period of two and one-half hours. I don't know where the contracts are. I couldn't find this contract although the period of evacuation was extended to one whole day."

Mr. Gallagher: I now offer Plaintiff's Exhibit 3 and Plaintiff's Exhibit 3-A in evidence.

The Court: Very well.

59 (The documents heretofore marked for identification as Plaintiff's Exhibit 3 and 3-A were accordingly received in evidence.)

(The reading from the deposition was resumed):

"Q. Together with this letter of April 11, 1929 you did send shares numbered from one to six hundred of Adam Opel, A.G. to the National City Bank, did you not?

"A. I remember that such a thing happened."

"Q. After you sent the shares of stock to the National City Bank in April, 1929, did those shares of stock remain with the bank until 1931?

"A. Yes, as far as I know.

"Q. Can you read any English at all, Mr. von Opel?

"A. It is very difficult for me to read English. I might realize what the general meaning is."

Mr. Gallagher: I now ask to have marked as Plaintiff's Exhibit 4 the power of attorney given to Fritz by his father. It has been admitted by the defendant that this is a true and correct copy.

(The copy of power of attorney was accordingly marked for identification as Plaintiff's Exhibit No. 4.)

Mr. Gallagher: And I also ask to have marked as
60 Plaintiff's Exhibit 4-A a copy of the certificate of acknowledgement by the counsel, also dated the same date.

(The copy of certificate of acknowledgement was accordingly marked for identification as Plaintiff's Exhibit 4-A.)

Mr. Gallagher: I believe, Mr. Ingoldsby, there is no pending question, but there is another answer after the identification.

(The reading from the deposition was then resumed):

"A. I am sure that this document exists also in German.

"Q. If such a document exists in German, do you know where it is?

"A. I don't know. I have no idea where it might be but I remember that such a paper has been executed.

"Q. Do you recollect that you executed such a document and gave it to your son Fritz?

"A. I remember that I gave a power of attorney to my son to act on my behalf.

"Q. And do you recollect that the power of attorney you gave to your son was dated on or about October 6, 1931?

"A. There is too much time elapsed between the date of this transaction and this day that I could be sure of the date but since our transaction took place in 1931 I
61 assume that the date on the document is correct.

"Q. Is it your recollection that this appears to be an English translation of the power of attorney you gave to your son Fritz some time during the year 1931?

"A. Yes, I gave my son a power of attorney entitling him to deal with the shares however he liked."

Mr. Gallagher: I now offer the documents, Plaintiff's Exhibit 4 and Plaintiff's 4-A.

The Court: Very well.

(The documents heretofore marked for identification as Plaintiff's Exhibit 4 and 4-A were accordingly received in evidence.)

Mr. Gallagher: I now ask to have marked as Plaintiff's Exhibit 5 the original of a gift agreement dated October 5, 1931, and I ask leave of the Court to substitute therefor a photostatic copy of that document.

The Court: All right.

(Copies of the gift agreement were accordingly marked for identification as Plaintiff's Exhibits 5 and 5-A, in English and in German, respectively.)

(The reading from the deposition was resumed as follows):

"Q. Mr. von Opel, did you and Mrs. von Opel ever make a gift to your son Fritz?

62 "A. Yes.

"Q. Do you remember when this gift was made?

"A. In the year 1931.

"Q. In connection with that gift, was a document drawn?

"A. Yes, a paper was executed.

"Q. Do you remember who drew that document?

"A. A document was re-written by Wronker-Flatow. It was originally drafted by the attorney Hachenburg but Hachenburg's draft was in another form.

"Q. Do you know where the original document of the gift agreement is at this time?

"A. I looked for it but I did not find it.

"Q. So the answer to the question is that you do not know where it is?

"A. Yes.

"Q. I will show you a document bearing the date Ruesselsheim, the 5th of October 1931, then I will ask some questions about it. To the best of your recollection is this a copy of the original gift agreement?

"A. Yes."

Mr. Gallagher: And I now offer the original gift agreement from which this copy was made, and which the defendant has heretofore admitted was a true and correct copy of the original.

63 The Court: It may be received.

(The documents heretofore marked for identification as Plaintiff's Exhibits 5 and 5-A were accordingly received in evidence.)

Mr. Gallagher: I now direct your attention to page 13, Mr. Ingoldsby, to the line beginning "Now to go back to 1929", after the offer of the Exhibit 5, at the middle of the page.

Mr. Ingoldsby: Yes.

(The reading from the deposition was accordingly resumed):

"Q. Now to go back to 1929 when Adam Opel, A.G. was sold to General Motors, was your son Fritz happy or unhappy about that sale?

"A. Very unhappy.

"Q. Can you briefly explain why?

"A. He was the man who was able to continue the management of the firm. But a number of prince consorts were brought in. They all wanted to play the general manager.

"Q. Just prior to the time the plant was sold to General Motors was Fritz the general manager of the whole plant?

"A. He was one of the managers of the whole plant.

"Q. How many managers were there?

"A. Three.

"Q. After the Opel Works was sold to General
64 Motors in 1929, where did Fritz go?

"A. He went to the United States.

"Q. Did he go with General Motors?

"A. Yes, he did.

"Q. And did he work in some of the General Motors plants in the United States?

"A. Yes, he worked as a volunteer in several of the plants.

"Q. About how long did he work for General Motors in America?

"A. For about three-fourths of a year.

"Q. And then was he sent to Antwerp by General Motors?

"A. Yes.

"Q. In their Export Division?

"A. Yes, he was sent there to learn their export business.

"Q. I asked a little while ago why Fritz was unhappy about the sale to General Motors in 1929?

"A. He expected to become the leading man in the family firm. He felt that for all practical purposes I had sold his future and his position.

"Q. Did Fritz' unhappiness have anything to do with your making the gift to him in 1931?

"A. Because of the fact that Fritz was so unhappy
65 I made him the gift of the General Motors shares to enable him to establish a position in the United States for himself."

Mr. Gallagher: Your Honor, the argument that probably will ensue later is a few pages further over. But, noticing the time, I wondered if Your Hohor desired to adjourn before reaching it.

The Court: You go ahead, until you reach that point.

Mr. Gallagher: All right, sir.

I now ask to have marked as Plaintiff's Exhibit 6 a copy of a letter from Fritz von Opel, attorney in fact, to General Motors, dated October 17, 1931.

(The copy of letter dated October 17, 1931 was accordingly marked for identification as Plaintiff's Exhibit No. 6.)

(The reading from the deposition then proceeded, as follows):

"Q. Do you know whether or not Fritz von Opel, as your attorney in fact, exercised the option to sell the Opel shares to General Motors?

"A. Yes.

"Q. Do you recollect what year it was that Fritz exercised that power?

"A. I am not quite sure, it might be 1931 or 1934.

"Mr. Connor: I will ask Dr. Kronstein to give
66 you the substance of the document which I have dated October 17, 1931 purporting to be a letter from Fritz von Opel, attorney in fact to General Motors. I will ask you if you have any reason to believe the option was exercised on any other date than that?

"A. I don't believe so."

Mr. Gallagher: I now offer Plaintiff's Exhibit 6, which it has been admitted was received or sent on that date.

(The copy of letter heretofore marked for identification as Plaintiff's Exhibit No. 6 was accordingly received in evidence.)

(The following question and answer were then read):

"Q. In connection with the gift, Mr. von Opel, did you cause your son to discuss the matter with Dr. Max Hachenburg of Mannheim?

"A. Yes."

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 7 a letter dated October 3, 1931, from Dr. Hachenburg to Dr. Wilhelm von Opel.

(The letter was accordingly marked for identification as Plaintiff's Exhibits 7 and 7-A.)

(The reading from the deposition was resumed):

"I will show you this document purporting to be a letter dated October 3, 1931 from Dr. Hachenburg to you
67 and I will ask you if such a letter was received by you.

"A. I remember this letter. I am only sorry that I have not followed the advice given in this letter. I did receive the letter.

"Q. Did you receive it in the regular course of mail?

"A. I believe I received this letter by mail."

Mr. Gallagher: I offer Plaintiff's Exhibit 7 in evidence.

(The documents heretofore marked for identification as Plaintiff's Exhibit 7 and 7-A were accordingly received in evidence.)

Mr. Gallagher: I ask to have marked as Plaintiff's Exhibit No. 8 a document purporting to be an enclosure in the letter of October 3, from Dr. Hachenburg to Wilhelm von Opel.

(The document was accordingly marked for identification as Plaintiff's Exhibit No. 8.)

(The following question and answer was then read):

"Q. I will show you this document marked Plaintiff's Exhibit No. 8 and ask you if that was an enclosure in the letter of October 3, from Dr. Hachenburg to you?

"A. Yes.

Mr. Gallagher: I now offer Plaintiff's Exhibit 8 in evidence.

68 (The document heretofore marked for identification Plaintiff's Exhibit 8 was accordingly received in evidence.)

(The following question was then read from the deposition):

"Q. The first paragraph of Plaintiff's Exhibit No. 7 recites in substance that the day before October 3, that is, October 2, Dr. Hachenburg had a long discussion with your son and gave him an outline of the contract."

Mr. Gallagher: I will now ask to have marked as Plaintiff's Exhibit 9 this document.

(The document referred to was accordingly marked for identification as Plaintiff's Exhibits 9 and 9-A.)

(The following question and answer were then read from the deposition):

"Q. I will now show you Plaintiff's Exhibit No. 9 and ask you if at or about that time your son Fritz von Opel showed you that outline?

"A. I cannot remember."

Mr. Gallagher: I will now ask to have marked as Plaintiff's Exhibit 10.

(The document referred to was accordingly marked for identification as Plaintiff's Exhibit No. 10.)

(The following question and answer were then
69 read from the deposition):

"Q. I will now show you another document purporting to be a letter dated October 5, 1931 from Dr. Max Hachenburg to you and ask you if you received such a letter in the regular course of mail?

"A. I remember that I received this letter."

Mr. Gallagher: I now offer Plaintiff's Exhibits 9 and 10 in evidence.

(The documents heretofore identified as Plaintiff's Exhibits 9, 9-A, and 10 were accordingly received in evidence.)

(The reading from the deposition then proceeded as follows):

"Q. Although you had your son Fritz discuss this gift matter with Dr. Hachenburg, am I correct in my understanding that Mr. Wronker-Flatow made the document in its final form?

"A. Yes.

"Q. It is a fact, is it not, that Fritz von Opel sold the 600 shares of Adam Opel stock which you gave him?

"A. Yes it is.

"Q. Yesterday you testified that Fritz had sold the six hundred shares of Adam Opel stock which you gave him.

Do you know what he did with the proceeds of that
70 sale?

"A. From conversations I learned that he acquired oil wells, participated in a brewery and acquired a gasoline refinery. He seemed to be interested in the gasoline refinery because he wanted to transform the oil into gasoline, I was told as time went on. I haven't seen anything with my own eyes.

"Q. Did you ever direct Fritz as to what he should do with the proceeds of the sale of Adam Opel stock?

"A. Never did. I discuss this matter with him.

"Q. Then, it is the fact, is it not, that you never undertook to control in any way what he should do with the proceeds of the sale of the stock?

"A. Yes.

"Q. Did you have anything to do with Fritz' investment in the Uebersee Finanz Korporation?

"A. I never had anything to do with that.

"Q. Did you ever direct Fritz to place the securities which he bought with the proceeds of the Opel stock into a holding company of any kind?

"A. Never.

"Q. Did you ever have any communication with Adler and Company, the Swiss banking firm?

"A. As far as I remember there was a director whose name was Dr. Frankenburg. I was familiar with him from
Frankfurt. Whether I exchanged letters I do not
71 remember. I do not believe that, no, no. I exchanged letters with Dr. Frankenburg of a personal character but not of a business character.

"Q. Did you ever have any business letter communication with the firm of Adler and Company itself?

"A. I cannot remember.

"Q. Were you ever a director of the Uebersee Finanz Korporation?

"A. No.

"Q. Did you ever own any stock in the Uebersee Finanz Korporation?

"A. No.

"Q. Did you ever, to the best of your recollection, have any business letter communication with the Uebersee Finanz Korporation?

"A. No.

"Q. To refresh your recollection, Mr. von Opel, I will call your attention to three items which appear on the books of the Uebersee Finanz Korporation and will ask you about each one of them. The books appear to show that on or about 4 October 1934 that there was paid to you through Uebersee at the direction of your son the sum of five-hundred and nine Swiss francs.

"(Mr. von Opel asked if this was paid to him in Switzerland and Mr. Connor stated that the books didn't
72 show.)

"Mr. von Opel: I received money from my son several times. He gave me a stag as a gift for shooting in Hungary and he paid for this. He financed my trip with francs to South America.

"Q. In reference to the South American trip, is it your recollection that you got that payment through the Rotterdamische Bankvereiniging?

"A. I have no idea from where the money came.

"Q. Do you remember approximately the amount of the advance which Fritz made in connection with your South American trip?

"A. I don't know the exact amount but I assume it was about 10,000 to 20,000 Reichsmarks computed in German currency.

"Q. When you made this trip to South America, can you recollect the year?

"A. I was in South America three times.

"Q. Was one of those trips during the year 1935, do you recollect?

"A. About this time. It was after my world trip which was about 1932.

"Q. Do you recollect when you were on this shooting trip in Hungary, Mr. von Opel?

"A. I was in Hungary repeatedly. I was in Hun-
73 gary about five times for hunting purposes.

"Q. To refresh your recollection, I will call your attention to the fact that the books of Uebersee show that apparently about 1934, 509 Swiss francs or the equivalent was paid to you in Paris. Do you recollect that?

"A. No.

"Q. Have you ever seen any of the books of the Uebersee Finanz Korporation?

"A. Never, no.

"Q. Did you ever have any arrangement of any kind with Uebersee Finanz Korporation in which they would make advances to you?

"A. No."

Mr. Gallagher: At this time I direct your attention to page 25, at the top of that page—

"Mr. Connor: I wish, Dr. Kronstein, that you would advise the witness I am going to shift to another subject at least for awhile."

Now we have a number of exhibits here, Your Honor.

The Court: A number of exhibits?

Mr. Gallagher: To be identified and marked again.

The Court: Is there any objection to these?

Mr. Gallagher: No, I don't believe there is.

The Court: Perhaps this is a good place to stop.
74 I will have to get a couple of opinions out between now and tomorrow morning. So until tomorrow morning at 10 o'clock.

(Accordingly, at 4:10 p.m., the trial was adjourned until tomorrow morning, Thursday, December 9, 1948, at 10 o'clock.)

* * * * *

The Deputy Clerk: Ueberse Finanz-Korporation v. Clark.

Mr. Gallagher: Your Honor, I would like to present to the Court Mr. Michael J. Kenny, member of the bar of the District, who is associated with us.

The Court: All right.

Deposition of WILHELM VON OPEL (Resumed)

(Reading from the deposition was resumed, Mr. Gallagher reading the questions and Mr. Ingoldsby, on the witness stand, reading the answers, as follows):

Mr. Gallagher: I direct your attention to page 30, the middle of the page, commencing with the language—

"Mr. Connor: I will ask to have marked as Plaintiff's Exhibit #24 a copy of a document entitled 'History of the Gift' dated September 18, 1933. I will ask to have the witness read Plaintiff's Exhibit #24. Is that a memorandum from your files?

"A. Yes.

"Q. Did you make it on the date shown?

"A. About this date. I cannot say if it was one-half day earlier or not.

"Q. Are the statements in that memorandum true?

"A. Yes."

Mr. Gallagher: I offer Plaintiff's Exhibit 24 in
78 evidence.

The Court: They will be received, unless there is objection.

(The document was accordingly received in evidence as Plaintiff's Exhibit No. 24.)

(The reading from the deposition was resumed):

"Q. I ask that the witness take a look at the fifth paragraph of Plaintiff's Exhibit #5. The gift agreement makes reference to 'Niessbrauch', doesn't it?

"A. Yes.

"Q. What did you intend by the provision concerning the 'Niessbrauch'?

"A. I intended to accomplish that my son takes care of me if I should suffer financial breakdown and have no money any more.

"Q. Did you ever intend to ask your son for any money while you had enough to support yourself?

"A. I never intended that.

"Q. Did you ever intend to ask him to do any more than provide for your and your wife's support when you had no money?

"A. No.

"Q. Up to this time have you ever asked your son to give you any part of the income from the property which you gave him?

"A. No.

79 "Q. Have you adequate property at this time to support your wife and yourself?

"A. Thanks be to God, yes.

"Q. Mr. von Opel, I believe you stated that your age is 77 years, is my recollection correct?

"A. I am 76 years old.

"Q. Now within the last two or three months have you been ill?

"A. Yes. I was sick seven weeks ago.

"Q. What illness did you have at that time?

"A. Pleurisy.

"Q. And how long were you ill?

"A. About three weeks but even now I am in the stage of convalescence."

Mr. Gallagher: Now turn to page 56, please—

"Cross Examination

"Mr. Wilhelm von Opel further testified as follows:

"By Mr. Baum:

"Q. Mr. von Opel,"—

The Court: Do you want to read that?

Mr. Gallagher: Your Honor, we want to offer this portion of the cross, unless the defense does.

Mr. Burling: We don't want to read it, but my suggestion is that if they read a part of it, and we come back, the record will be chopped up.

80 The Court: That is why I might suggest they do it, and if they leave out any part you want, you can offer it.

Mr. Gallagher: I may have the right to go back to any portion we may offer as redirect?

Mr. Burling: We also wish, if Your Honor please, to read certain portions of the direct that were omitted.

The Court: All right.

Mr. Gallagher (to Mr. Burling): You say now you wish to offer certain portions of the direct that were omitted?

Mr. Burling: We should read that first, Your Honor, before the cross-examination.

The Court: I will let you read any part you want, that you think is helpful to your case.

(Mr. Ingoldsby having left the witness stand and returned to the trial table):

Mr. Baum: If Your Honor please, Mr. Laufer may follow the same procedure, and be the witness?

The Court: Surely.

(Mr. Laufer now on the witness stand):

Mr. Baum: I will start reading at the top of page 25:

"Mr. Connor: I wish, Dr. Kronstein, that you would advise the witness I am going to shift to another subject at least for awhile."

The Court: Is this direct?

Mr. Baum: That is correct, Your Honor.

81 The Court: Perhaps I should have a copy of this, and I can follow you a little better. All right, go ahead.

Mr. Baum (continuing reading):

"I ask to have marked as Plaintiff's Exhibit #15 a copy of a document dated September 9, 1931 addressed to the Finanzamt at Wiesbaden."

May I have the document which was marked Plaintiff's Exhibit 15 to the deposition?

Mr. Gallagher: Has it been offered?

Mr. Baum: I ask that this document be marked Defendant's Exhibit 1.

Mr. Gallagher: What is that marked?

Mr. Baum: That is 15, in your deposition.

Mr. Gallagher: You are going to switch the order?

Off the record, please.

(A document having been marked for identification as Defendant's Exhibit 1):

Mr. Baum: Your Honor, rather than hold up the proceedings, I have offered the English translation of the document. I think we may go ahead until the plaintiffs find from the Court files the original of this in German.

The Court: Is there any objection to that?

Mr. Gallagher: No objection.

We have it now, Your Honor.

The Court: All right; proceed.

82 Mr. Baum: And I offer this document as Defendant's Exhibit 1-A.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 1 and 1-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 2 an instrument which was attached in the deposition to Plantiff's Exhibit 15, a letter of September 9, 1931, to the Finanzamt Wiesbaden.

The Court: We will have it understood, gentlemen, wherever a document is offered and there is no objection, it will be received without my announcing it. If there is objection, of course, I will rule on it.

Mr. Gallagher: Yes, sir.

(The letter was accordingly marked as Defendant's Exhibit 2.)

Mr. Baum: (To the Deputy Clerk) And Defendant's Exhibit 2-A.

(The last-mentioned document was marked as Defendant's Exhibit 2-A.)

Mr. Baum: And I ask to have a copy of a document dated October 28, 1931, addressed to Firma Adler and Company Kommandit Aktien—Gesellschaft, marked as Defendant's Exhibit 3, and the German will be 3-A.

(The copies of the document were accordingly marked for identification as Defendant's Exhibits 3 and 3-A.)

83 Mr. Baum: I ask to have marked, which will be Defendant's Exhibit 4, letter dated December 24, 1931, addressed to Wilhelm von Opel from the Schweize-

rische Kreditanstalt. (Credit Suisse). And Defendant's Exhibit 4-A.

(The documents were accordingly marked as Defendant's Exhibits 4 and 4-A.)

Mr. Baum: (Resuming reading from deposition):

"I hand Plaintiff's Exhibits #15, #15-A, #16 and #17"—Now Defendant's Exhibits 1, 2, 3, and 4—"to the witness and ask that he read them.

"Q. This morning, Mr. von Opel you testified you had no recollection of any written correspondence with Adler and Company. I will ask you if Plaintiff's Exhibit #16 refreshes your recollection to the contrary?

"A. This letter was not in my mind when I testified this morning.

"Q. I will ask you now then, after having shown you the letter, do you recollect having written this letter to Adler and Company?

"A. I don't see any signature under this letter. I assume that a signature should appear on the copy.

"Q. Shouldn't the signature appear on the original rather than on the copy, Mr. von Opel.

"A. I assume that a signature should also appear on the copy. I cannot remember to have written this letter.

84 "Q. I will now show what purports to be a letter to the Finanzamt at Wiesbaden—Plaintiff's Exhibit #15 and ask you whether or not you recollect having written that letter to the Finanzamt?

"A. I don't remember this letter. This whole matter is entirely out of my memory."

Mr. Baum: I will now skip to page 29, the question beginning with the words "On Saturday, I asked you"—

"Q. On Saturday, I asked you about Plaintiff's Exhibit #16 purporting to be a letter dated October 28, 1931 from you to Adler and Company and I believe you stated you had no recollection of this letter. I will now ask you if over the week end you have gone over several papers pertaining to this matter and if your recollection is now refreshed in regard to this letter?

"A. Yes, I now remember.

"Q. Will you state whether or not this is a copy of the letter you sent to Adler and Company?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 3 in evidence.

(The document heretofore marked for identification as Defendant's Exhibit No. 3 was accordingly received in evidence.)

Mr. Baum: I now ask to have marked as Defendant's Exhibit 5 a copy of a letter from Adler and Company
85 to Wilhelm von Opel, dated November 30, 1931. That is referred to in the deposition as Plaintiff's Exhibit 16-A.

(To the Deputy Clerk) This will be 5-A, and this will be Defendant's Exhibit 5.

(The documents were accordingly marked for identification as Defendant's Exhibits 5 and 5-A.)

(The following question and answer were now read from the deposition):

"Q. I will now ask the witness if he received this letter?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 5 in evidence.

(The documents heretofore identified as Defendant's Exhibits 5 and 5-A were accordingly received in evidence:)

(The reading from the deposition was then resumed as follows):

"Q. To the best of your recollection are these documents, Plaintiff's Exhibit #16 and #16-A, the only communications you ever had with Adler and Company?

"A. Yes.

"Q. Will you state briefly why you wanted to make the guarantee mentioned in those letters?

"A. To establish an existence for my son.

"Q. But you were unable to go through with that transaction, were you?

86 "A. The 3,500,000 reichsmarks involved in this guarantee I had to call back to Germany.

"Q. So therefore, you couldn't go forward with that transaction?

"A. Therefore, I could not execute this transaction, so I came to the idea to make the gift."

Mr. Baum: I now ask that the Defendant's Exhibits 1, 2, 3, 4, and 5 be received in evidence.

Mr. Gallagher: No objection.

(Defendant's Exhibits 1, 2, 3, 4, and 5 were accordingly received.)

Mr. Baum: That is all the direct examination I wish to read. I will now proceed to the cross.

This is the cross-examination of Wilhelm von Opel, appearing on page 56 of the deposition:

"The witness, Mr. Wilhelm von Opel, further testified as follows:

By Mr. Baum:

"Q. Mr. von Opel, in 1929 what position did you hold in Adam Opel, A. G.?

"A. I was Chairman of the Board of Supervisors.

"Q. And after 80% of the shares of Adam Opel, A. G. were sold to General Motors in 1929, did you continue in the same position?

"A. Yes, General Motors confirmed me in my position.

87 "Q. And how long did you remain in that position?

"A. Until a few years ago. Until I was for political reasons constrained to retire.

"Q. What do you mean for 'political reasons constrained to retire'?

"A. At the order of General Motors I joined the Nazi party.

"Q. And for that reason you were forced to retire?

"A. As a member of the party I was compelled to resign from my position as a chairman of the board of supervisors.

"Q. By whom were you so compelled?

"A. I resigned voluntarily already prior to the enactment of the law requiring that because I knew what was coming.

"Q. And after 1929 did you hold any positions in any other business enterprise in Germany?

"A. I was also a member of the board of supervisors in the Continental Rubber, Hapag, North German Lloyd, Iron Foundry Becker which is a member of the Opel concern and in Adam Opel, A. G.

"Q. Did you take an active part in the companies you have just mentioned?

"A. Not active, but as chairman of the board of supervisors I was given certain tasks of Adam Opel, A. G. I was given certain special tasks of General Motors.

"Q. Did you have investments in companies other
88 than the Opel which you mentioned?

"A. Yes.

"Q. Were those investments made before or after 1929?

"A. In the main it was after 1929 because then I came into possession of liquid funds.

"Q. By your answer you mean do you not, that you used the money you received from the sale of the Opel shares in 1929?

"A. Yes.

"Q. And how much did you personally receive from General Motors in 1929 from the sale of the Opel shares?

"A. I cannot say definitely how much it was.

"Q. Was it 24,000,000 Rm?

"A. I was just about to say 24,000,000 or 26,000,000 Rm. more or less, after I had paid my obligation.

"Q. And with this money which you received from General Motors, you became interested in other companies and became a member of the board of directors, is that correct?

"A. Yes.

"Q. Did you have any other interests in business enterprises before 1929?

"A. Yes, by share holdings.

"Q. And what was the approximate value of these investments?

"A. I cannot remember that.

89 "Q. And after the sale to General Motors in 1929, you owned 600 shares of Adam Opel, A. G., is that correct?

"A. Yes.

"Q. And you still owned those shares as of January 1, 1931, did you not?

"A. Yes."

Mr. Baum: I will now skip from that point to line 5 on the next page, with the question beginning "The 600 remaining Opel shares"—

"Q. The 600 remaining Opel shares which you had originally retained in 1929 were sold to General Motors by your son Fritz von Opel as attorney in fact for you in 1931, were they not?

"Mr. Baum: For the purpose of assisting the witness in answering the question, I will show him Plaintiff's Exhibit #6?

(To counsel for plaintiff). Is that still Plaintiff's Exhibit 6?

Mr. Gallagher: Yes, in the same order.

(The reading from the deposition was then resumed, Mr. Baum reading the questions and Mr. Laufer reading the answers, as follows):

"A. I have made a gift of the shares to my son and I was annoyed about the fact that he sold them.

"Q. But you know that he sold them to General Motors in 1931, do you not?

"A. I see that from this document and as a member of the board of supervisors this fact was reported to me.

"Q. And do you know for what price those shares were sold to General Motors?

"A. We have made an agreement with General Motors pursuant to which we could sell the shares at such and such a price but I do not know at what price they were actually sold.

"Q. When you were questioned by Mr. Connor, you identified this document, Plaintiff's Exhibit #6 as being a copy of a notice to the General Motors Corp. exercising the option under the agreement of April 11, 1929, did you not?

"A. Yes."

Mr. Baum: Plaintiff's Exhibit 6 was here retranslated to the witness. Then—

"Q. Can you tell from Plaintiff's Exh. #6 at what price the shares were sold?

"A. No.

"Mr. Opel: I want to point out that I never bothered about the sale because the shares were no longer in my possession.

"Q. You say you never bothered about the sale of the shares after this time because the shares were no longer in your possession, is that correct?

91 "A. Yes.

"Q. That is because you claim you gave the shares to your son on October 5, 1931, is that not correct?

"A. Yes.

"Q. And yet on October 6, 1931, you gave your son a power of attorney to deal with these shares on your behalf with General Motors Corporation, is that not true?

"Plaintiff's Exh. #4 here retranslated to the witness.

"A. If it says so in the document, it must be correct."

Mr. Baum: I ask to have marked as Defendant's Exhibit 6 a copy of a cable from Wilhelm von Opel to Mr. Sloan, dated October 23, 1931.

(The copy of cable was marked for identification as Defendant's Exhibit 6.)

Mr. Ingoldsby: What is the old number on that?

Mr. Baum: It is the same number. It happened to work out to be the same number.

Mr. Ingoldsby: I see.

(The reading from the deposition resumed):

"I show the witness Def. Exh. #D-6 and ask him to read it.

"Q. Is that a copy of a cable which you sent to General Motors on October 23, 1931?

"A. I cannot say that.

"Q. You don't remember?

92 "A. No, I don't remember."

Mr. Baum: I offer this Defendant's Exhibit 6 in evidence at this time, since plaintiffs have admitted that this document was received by Wilhelm von Opel, subsequent to the date of this deposition.

(The document heretofore identified as Defendant's Exhibit 6 was accordingly received in evidence.)

(The reading from deposition resumed):

"I ask to have marked as Def. Exh. D-7, a copy of a cable to Wilhelm von Opel signed 'Smith', dated October 30, 1931.

"I show the witness Def. Exh. D-7 and ask him to read it.

"Q. Do you remember this cable?

"A. No.

"Q. In other words, Mr. von Opel, you do not remember that on October 23 you offered to keep one-half of the 600 shares of Opel, A. G. until the first of January, 1936?

"A. No, I do not remember that.

"Q. And you do not remember that on October 30, 1931, General Motors accepted your proposal?

"A. That is all new to me."

Mr. Baum: I now offer Defendant's Exhibit 7, since that has also been admitted to have been received by Wilhelm von Opel.

93 (The copy of cable was received in evidence as Defendant's Exhibit No. 7.)

Mr. Baum: I now ask to have marked as Defendant's Exhibit 8 a certified copy of the transcript of record of the United States Circuit Court of Appeals for the Second Circuit, in the case of Uebersee Finanz Korporation, A. G. vs. Walter T. Rosen and others, which bears the signature or certificate of the clerk of the Second Circuit; and the Federal Reserve Bank of New York was a party defendant.

(The certified copy of transcript of record was marked for identification as Defendant's Exhibit No. 8.)

Mr. Baum (resuming reading from deposition):

"I show the witness the affidavit of Fritz von Opel, which appears beginning on page 43 of that record, and ask to have translated to him the paragraph which bears the number 6."

Mr. Gallagher: Excuse me just a moment, Mr. Baum.

Mr. Baum: I am substituting the whole affidavit for part of the affidavit, to make it more simple.

Mr. Gallagher: All right.

(The reading from the deposition was then resumed as follows):

"Q. Now, Mr. von Opel, do you remember having cabled to General Motors offering to retain 300 shares and receiving payment for them in gold or on a gold basis?

94 "A. No.

"Q. So you do not remember sending a cable to General Motors on October 23, 1931?

"A. I do not remember.

"Mr. Baum: I point out to the witness that Def. Exh. D-8 is a sworn statement of his son.

"Q. Do you think that your son was not telling the truth?

"A. My son tells the truth as his father does.

"Q. Your son in this affidavit Def. Exh. D-8, states that after October 5, 1931, he came to New York and that he learned from Mr. Smith that you had agreed by cable with Mr. Sloan to modify the escrow agreement for 300 Opel shares. Is that true or not?

"A. I do not remember the matter. It is so important—he wanted to arrange the matter one-half one way and the other half the other way—I really should remember it.

"Q. But you cannot remember it?

"A. I cannot remember that. I made a gift of the shares on October 5 to my son and after that the matter was settled as far as I was concerned."

Mr. Baum. I will not insist on my motion to strike, which is contained in the record.

(The reading resumed):

95 "I ask to have marked as Def. Exh. D-9 a copy of a letter from Mr. E. F. Regan of the National City Bank to Mr. Fritz von Opel, dated September 22, 1933 and acknowledged by Mr. Regan before a notary public.

"I ask to have the body of the letter translated to the witness.

"Q. I ask the witness whether he instructed the Deutsche Bank & Disconto Gesellschaft Frankfurt on October 24, 1931 to cable the National City Bank in the form quoted in Def. Exh. D-9?

"A. I do not know anything about it.

"Q. As far as you can remember now, Mr. von Opel, you have no knowledge of instructing the bank to send such a cable?

"A. No, I do not remember anything.

"Q. Mr. von Opel, in the year 1931 you had an account in Switzerland in the sum of 3,875,000 Swiss francs, did you not?

"A. Yes, more or less."

Mr. Baum: At this point I offer Defendant's Exhibit 9, the genuineness of which has also been admitted by the plaintiffs.

(The document was received in evidence as Defendant's Exhibit No. 9.)

(The reading from deposition resumed):

96 "Q. And as stated in Defendant's Exhibit 2, formerly Plaintiff's Exhibit 15-A, that amount was to be used to guarantee an obligation of your son Fritz to Adler and Company, is that not correct?

"A. Yes, to guarantee it.

"Q. And as stated in Defendant's Exhibit 2, formerly Plaintiff's Exhibit 15-A, your son's obligation involved the purchase of shares of Uebersee Fananz Korporation, did it not?

"A. I do not know of the matter.

"Q. But you remember the guarantee?

"A. No, I do not remember the guarantee.

"Q. You just testified you did?

"A. I said that I remembered the sum of 3,700,000 francs.

"Q. Do you remember that on September 9, 1931, you applied for a license to dispose of the Swiss account to guarantee your son's obligation as shown in Plaintiff's exhibit #15?

"A. I remember this letter and also that I had the money returned home.

"Q. When?

"A. That must have been around that time or three or four months or three or four weeks later.

"Q. Now you testified, Mr. von Opel, that you made
97 this guarantee in order to enable your son to establish an existence for himself, did you not?

"A. Yes, he should use the money for that purpose.

"Q. And then on October 5, 1931, you claim you made a gift to your son of 600 shares of Opel for the same purpose, did you not?

"A. I believe that the money had to be returned to Germany and by the fact of the return of the money to Germany I conceived the notion of making the gift of the shares.

"Mr Baum: I now ask to have marked as Def. Exh. D-10 a letter dated March 21, 1932 from der Praesident des Landesfinanzamts Kassel to Mr. Wilhelm von Opel."

Mr. Baum: I ask to have the English marked Defendant's Exhibit 10, and the German 10-A.

(The documents were marked for identification as Defendant's Exhibits 10 and 10-A.)

Mr. Baum: I also ask to have marked as Defendant's Exhibits 11 and 11-A, from letter requesting registration of liabilities to foreign creditors, dated November 30, 1931.

(The form letter was accordingly marked for identification as Defendant's Exhibits 11 and 11-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 12 a copy of a letter and attachments, consisting of
98 three pages, to the registration office for foreign liabilities, dated December 11, 1931.

(The copy of letter and attachments was accordingly marked for identification as Defendant's Exhibit 12.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 13 a letter to the Devisenstelle Frankfurt, dated January 5, 1932, together with an attachment consisting of two pages and representing a list of patents.

(The letter was marked for identification as Defendant's Exhibit 13.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 14 a letter addressed to the Devisenstelle Frankfurt, dated January 13, 1932, and an attachment thereto of the same date, containing a declaration in lieu of an oath.

(The letter was accordingly marked for identification as Defendant's Exhibit 14.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 15 and 15-A, a letter from the Devisenstelle Frankfurt to Wilhelm von Opel, dated January 25, 1932.

(The letter was marked for identification as Defendant's Exhibits 15 and 15-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 16 a copy of a letter to the Devisenstelle Frankfurt,
99 dated February 5, 1942.

(The copy of letter was marked for identification as Defendant's Exhibit 16.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 17 and 17-A a notice of attachment dated February 10, 1932, from the sheriff's office, Zurich, to Dr. Wilhelm von Opel.

(The notice was marked for identification as Defendant's Exhibits 17 and 17-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibits 18 and 18-A a letter from the Schweizerische Kreditanstalt to Mr. Wilhelm von Opel, the letter being dated February 25, 1932.

(The letter was marked for identification as Defendant's Exhibits 18 and 18-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibits 19 and 19-A a notice of request for transfer of property attached, from the sheriff's office, Zurich, dated March 15, 1932, addressed to Dr. Wilhelm von Opel.

(The notice was accordingly marked for identification as Defendant's Exhibits 19 and 19-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibits 20 and 20-A a letter of the Reichsbank Wiesbaden to Dr. Wilhelm von Opel, dated March 24, 1932.

(The letter was marked for identification as Defendant's Exhibits 20 and 20-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 21 copy of a letter of April 5, 1932, from Dr. Wilhelm von Opel to Reichsbankstelle Wiesbaden.

(The letter was accordingly marked for identification as Defendant's Exhibit 21.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 22 copy of a letter dated April 14, 1932, from Dr. Wilhelm von Opel by Miss Uebel to the registration office for foreign liabilities, and attached thereto a completed registration form.

(The copy of letter was marked for identification as Defendant's Exhibit 22.)

Mr. Baum: I ask to have marked as Defendant's Exhibits 23 and 23-A, letter of May 9, 1932, from the registration office for foreign liabilities to Dr. Wilhelm von Opel, containing therein a completed supplementary form.

(The letter was marked for identification as Defendant's Exhibits 23 and 23-A.)

(Reading from deposition resumed):

"I show the witness Defendant's Exhibit D-11 which is a request for a report of foreign liabilities and ask him whether he remembers having received that form?

"A. Yes, that was the registration of foreign liabilities.

"Q. And that form is dated November 30, 1931, is it not?

"A. Yes, that is the covering letter in which they sent the registration forms."

Mr. Baum: I offer Defendant's Exhibit 11 in evidence.

(The document heretofore marked for identification as Defendant's Exhibit 11 was accordingly received in evidence.)

Mr. Baum (Resuming reading from deposition):

"Mr. Connor: I concede that Defendant's Exhibit 10, a letter from the Devisenstelle Frankfurt to Mr. Wilhelm von Opel dated March 21, 1932 was received at the office of Mr. Wilhelm von Opel.

"Mr. Baum: I offer Defendant's Exhibit D-10 in evidence.

"Mr. Connor: No objection.

"Mr. Baum: I offer Defendant's Exhibit D-11 in evidence.

"Mr. Connor: No objection.

"Mr. Baum: I show the witness Defendant's Exhibit D-12 consisting of a copy of a letter to the registration office for foreign liabilities dated December 11, 1931, together with a completed form and a supplement thereto bearing the same date and ask him to read it.

"Q. Is Defendant's Exhibit D-12 a copy of a letter and an accompanying report which you sent to the regis-
102 tration office for foreign liabilities?

"A. Yes.

"Mr. Connor: I concede that Defendant's Exhibit D-12 is a copy of the documents submitted to the registration office for foreign liabilities."

Mr. Baum: Mr. Gallagher, are you now willing to concede all the documents up through 23?—And we will stop reading it.

Mr. Gallagher: Surely, we are.

Mr. Baum: I offer Defendant's Exhibits 12 through 23, as having been conceded by the plaintiffs.

(The documents heretofore identified as Defendant's Exhibits 12 through 23 were accordingly received in evidence.)

Mr. Baum: And I will therefore skip and begin reading at the top of page 68, line 3:

"Mr. Baum: Mr. von Opel, I show you Defendant's Exhibit D-13 and ask you to read it.

"Q. Mr. von Opel, in that letter, Defendant's Exhibit D-13, you state that your son attached your Swiss account in order to protect himself, do you not?

"A. Yes.

"Q. But you had given your son on October 5, 1931, you say, 600 Opel shares, had you not?

"A. Yes.

103 "Q. Then why did your son need the 3,500,000 Swiss francs to protect himself?

"A. I do not know what kind of a transaction of my son that was.

"Mr. Baum: I show the witness Defendant's Exhibit D-17 and ask him whether his son attached his Swiss bank account.

"A. Something was involved and some sort of bank transaction.

"Q. According to Defendant's Exhibit D-10 the application for a license to release the Swiss bank account was denied on March 21, 1932, was it not?

"A. They have rejected that.

"Q. Now you testified a short while ago, Mr. von Opel, that you made a gift of the 600 shares of Opel stock to your son because the 3,500,000 Swiss francs had to be brought back to Germany, did you not?

"A. I do not recall whether it is true or not.

"Q. You said before that because you had to bring the money back you conceived the idea of a gift of the shares to your son, did you not?

"A. I must think about the matter. It happened a long time ago. I cannot state that so precisely."

Mr. Baum (continuing): Now resuming on the next page:

"By Mr. Baum:

104 "Q. Mr. von Opel, will you tell us in your own words the reasons why you claim you made a gift of the 600 shares of Opel stock to your son Fritz?

"A. He was supposed to build himself a new livelihood after I had sold his livelihood in Germany to the Americans.

"Mr. Baum: I have asked to have marked as Defendant's Exhibit D-24 a memorandum to the files entitled 'Personal considerations concerning the gift'.

"I show the witness Defendant's Exhibit D-24 and ask him to read it.

"Q. Is this exhibit, Defendant's Exhibit D-24, a copy of a memorandum which you wrote on September 19, 1933?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 24 in evidence.

(The document identified as Defendant's Exhibit No. 24 was received in evidence.)

Mr. Baum (Resuming reading):

"Mr. von Opel, I call your attention to the fact that this memorandum states that the gift was made above all to avoid an increase in the inheritance tax, is that not correct?

"A. If one makes a gift one considers why one
105 makes a gift.

"Q. Who originally suggested the idea of a gift, you or your son Fritz?

"A. The idea of a gift originated with me since my son could not make a gift.

"Q. Did your son ask you to make a gift to him?

"A. He did not ask me, I did that of my own accord.

"Q. Mr. von Opel, I call your attention to Plaintiff's Exhibit 24 which states in the second paragraph that your son came to you and suggested the idea of a gift?

"A. I remember that my son came to me and that we discussed the matter and then Mr. Hachenburg said it could be done by way of a gift.

"Q. Mr. von Opel, I show you Plaintiff's Exhibit 5, a copy of the purported gift agreement and ask you when that was executed?

"A. It was signed in accordance with the date.

"Q. And where was it signed?

"A. As far as I can remember I signed in Ruesselsheim.

"Q. In your office or in your home?

"A. In my office for at that time I no longer resided in Ruesselsheim.

"Q. And when did your wife and your son sign the
106 agreement?

"A. I assume that my son signed at the same moment that I signed.

"Q. Were any other people present besides yourself, your son and your wife when you signed?

"A. I cannot say that any more.

"Q. Was the original of that exhibit shown to any government officials?

"A. I believe that the document was submitted to the foreign exchange authorities or to the prosecuting authorities.

"Q. Did they keep the original or did they give it back to you?

"A. I cannot remember that. I have been looking for the original and was unable to find it.

"Q. Was your home or your office in any way damaged during the war?

"A. Not very much. Somewhat.

"Q. Were either of them hit by bombs?

"A. My house here was hit by a dud.

"Q. Did you lose any of your personal papers as a result of the war?

"A. Not as a result of the war but because of the fact that the Opel firm left me so little time to vacate my office some of the files disappeared.

"Q. You had a day to vacate your office, did you
107 not?

"A. A day.

"Q. And you took your papers with you when you left your office, did you not?

"A. Some of the papers were burned which came from my office which I had had for forty years. Some I dragged to a neighboring house and some I took along.

"Q. Who burned the papers?

"A. My secretary.

"Q. Which secretary?

"A. Either Miss Muehleberger or Miss Esklony.

"Q. Were those papers burned at your instructions?

"A. Yes, upon my instructions.

"Q. Is it possible that the original of Plaintiff's Exhibit #5 was burned?

"A. That may have been possible.

"Q. Did your daughter Elinor ever see the original or a copy of Plaintiff's Exhibit #5?

"A. I cannot say that. She had nothing to do with it.

"Q. Was the original of Plaintiff's Exhibit #5 ever shown to anyone else other than your own family and the foreign exchange authorities?

"A. I had no interest in showing it to others but I do not know.

108 "Mr. Baum: I ask to have marked as Defendant's Exhibit D-25 a letter from Fritz von Opel to his father, dated December 21, 1936. And I show the letter to the witness and ask him to read it.

"Q. Is this a letter which you received from your son Fritz?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 25 in evidence.

(The letter was marked as Defendant's Exhibit No. 25 and 25-A for identification, and received in evidence.)

Mr. Baum: I will now skip down that page to where I ask to have marked Defendant's Exhibit 27—

"I ask to have marked as Defendant's Exhibit 26"—formerly 27—"a letter from Mr. Wilhelm von Opel to his son Fritz, dated September 21, 1933." That should be 26 and 26-A.

(The letter was accordingly marked for identification as Defendant's Exhibit 26 and 26-A.)

"I show the witness Defendant's Exhibit 26"—formerly 27—"and ask him to read it.

"Q. Is this a letter which you sent to your son?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 26 in evi-
109 dence.

(The letter, heretofore identified as Defendant's Exhibit 26, was received in evidence.)

(The following question and answer were then read):

"In this letter, Mr. von Opel, you requested information from your son concerning the details of the transactions in America, did you not?

"A. I had no business asking for these details but the curiosity of a father induced me to write the letter."

Mr. Baum: I now skip—

Mr. Gallagher: Your Honor, we ask that the next question be read in, to show why he asked.

Mr. Baum: We will be glad to read it—

"Q. Didn't you ask for those details because you were being investigated by the foreign exchange control authorities?

"A. That very likely had something to do with it."

Mr. Baum: I will skip the next question, since that letter is now in, and I will continue reading at the second line of page 73:

"Mr. von Opel, I show you Plaintiff's Exhibit 8, the draft of an agreement prepared by Mr. Hachenburg.

"And now I show you, Mr. von Opel, Plaintiff's Exhibit 24 and call your attention especially to the last sentence to to that exhibit. The last sentence says that the gift
110 was carried through in accordance with the Hachenburg draft, does it not?

"A. The Hachenburg draft was modified somewhat by Wronker-Flatow.

"Q. The Hachenburg draft which I just showed you, provides for a holding company, does it not?

"A. So far as I can remember, yes.

"Q. But in Plaintiff's Exhibit 5 there is no mention of a holding company?

"A. No.

"Mr. Baum: I show the witness now Defendant's Exhibit D-8, the affidavit of Fritz von Opel, dated June 7, 1935, and ask to have translated to him the first full paragraph on page four of the affidavit."

Mr. Baum: That is now—it appears at folio 138 of the record on appeal.

(The reading from the deposition was resumed as follows):

"Q. That affidavit of your son Fritz says that he orally agreed with you that the shares would be put in a holding company, does it not?

"A. Yes.

"Q. Is that statement true?

"A. My son in his impulsive nature, upon the execution told me things that he was going to do with the
111. shares.

"Q. Whose idea was it to include a provision for a 'Niessbrauch' in Plaintiff's Exhibit 5?

"A. Unfortunately, it was my idea to insert the 'Niessbrauch' but it was interpreted differently than it was intended. This was intended to be a security so that he should support me if I lost everything.

"Q. When you executed Plaintiff's Exhibit 5 you wanted the 'Niessbrauch' provision in it did you not?

"A. Yes.

"Q. At the time the agreement was executed you thought it was important to have a 'Niessbrauch', did you not?

"A. I considered it important as a safeguard for me in my old age.

"Q. Would you have made the gift to your son if there had been no 'Niessbrauch' provision in the agreement"?

"A. I would not have signed the agreement if there has not been a protection for me in it.

"Q. Now you testified that the 'Niessbrauch' was included in the agreement so that your son could support you in the event you lost everything, did you not?

"A. Yes.

"Q. Where in Plaintiff's Exhibit 5 does it say that you were to have a 'Niessbrauch' so that your son should
112. support you if you lost everything?

"A. That is not stated here.

"Q. In this agreement, Plaintiff's Exhibit 5, it is provided that your son is to receive 20% of the income, is that correct?

"A. It says so there.

"Q. I show you now Plaintiff's Exhibit 8, the Hachenburg draft of the agreement and ask you whether or not it is provided that you should receive 75% of the income?

"A. As I just read quickly, that is what is stated therein.

"Q. Why was your share of the income changed from 75% to 80% when the agreement was executed?

"A. For the reason that we wanted to have more."

Mr. Baum: I desire to skip, now, to the top of page 77.

Mr. Gallagher: We ask that it be read in, Your Honor. We ask that that portion be read in.

Mr. Baum: I will read it, then—

"Q. Mr. von Opel, you testified that you knew Dr. Frankenburg only socially, is that correct?

"A. Socially, well we did not discuss girls only, we also talked about business matters.

"Q. Did you ever employ Dr. Frankenburg as your agent or representative?

113 "A. I often asked his advice but I never paid him for it. I do not recall that he ever requested anything for it.

"Q. Did he ever act on your behalf whether he was paid or not?

"A. He was employed by Adler and Company and we may have transacted some business because of his connection with that firm.

"Mr. Baum: I ask to have translated to the witness the first four sentences of paragraph 9 of Defendant's Exhibit D-8, the affidavit of Fritz von Opel of June 7, 1935.

"Q. Did you suggest to your son that Dr. Frankenburg should become Managing Director of the holding company?

"A. No.

"Q. Well then, is the statement made by your son Fritz not correct?

"A. After I made the gift of the shares to my son, he talked to me about it now and then but I said I didn't care, it was all the same to me.

"Mr. Baum: I now ask to have translated to the witness the first two sentences of paragraph fifteen of Defendant's Exhibit D-8, the affidavit of Fritz von Opel, dated June 7, 1935.

114 "Q. Is the statement that the key to the deposit was held by Dr. Frankenburg as your agent and representative true?

"A. I have nothing to do with the key.

"Q. Was Dr. Frankenburg your agent or representative for the purpose of safeguarding your 'Niessbrauch'?

"A. No.

"Q. Then would you say that the statement made by your son Fritz is not true?

"A. I do not wish to say. That may be an agreement between my son and Dr. Frankenburg in my interest.

"Q. Mr. von Opel, do you know a Mr. Theodore Hoffacker?

"A. I do not know him but the name sounds familiar to me as if I had heard it before.

"Q. As far as you can remember, did you ever have any business dealings with Mr. Hoffacker?

"A. No.

"Q. Mr. von Opel, did you ever give any instructions to your son or anyone else concerning what should be done with the shares of stock of the Spur Distributing Company?

"A. I hear that name for the first time today."

The Court: Excuse me just a moment. I will have to take a brief recess here for about 5 minutes.

(Following the recess):

The Court: Gentlemen, I am sorry our 5 minutes stretched out as it did, but I had an important conference with Judge Morris which took some time.

All right, Mr. Baum.

Mr. Baum: We were at the top of page 77—

"Mr. von Opel, in Plaintiff's Exhibit 5, in the first paragraph the agreement reads that it is your desire to preserve the shares in the male line of the family, is that not correct?

"A. Yes.

"Q. What did you mean by that?

"A. That my son and my children shall be connected with the Adam Opel firm which my father established and developed into a great enterprise.

"Q. But on October 5, 1931, you knew that General Motors had the right under their agreement, which is Plaintiff's Exhibit 3, to buy the shares any time up until 1934, did you not?

"A. Yes, as it is written in the agreement.

"Q. And this agreement, Plaintiff's Exhibit 5, itself recognizes the possibility of such a sale by providing the 'Niessbranch' will attach to that property substituted for the shares, does it not?

"A. That is written here.

116 "Then at the time you say this agreement was executed you knew that it was possible that your son would not keep any interest in the firm, did you not?

"A. It was not clear that he would sell.

"Q. But General Motors could buy the shares whether he wanted to sell or not, couldn't they?

"A. We had an agreement with General Motors, yes.

"Q. If you yourself had sold the shares to General Motors for dollars what would you have had to do with the dollars?

"A. If I would have sold them I would have to report them to the authorities.

"Q. And under the law in 1931 you would have had to deliver the dollars to the Reichsbank for marks, would you not?

"A. Yes."

Mr. Baum: I will now skip to line 4 on page 79:

"Mr. Baum: I ask to have marked as Defendant's Exhibit 27—formerly 28—a hand-written copy of a telegram addressed to the Prussian Minister of Justice, Berlin, and bearing the notation 'Dispatched about May 17, 1934'.

"I ask the witness to read Defendant's Exhibit 27, formerly 28.

"Q. Is that your handwriting on Defendant's Ex-
117 hibit 27?

"A. No, no.

"Q. Is this a copy of a telegram which you sent to the Minister of Justice in Berlin?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 27 in evidence.

(The copy of telegram was accordingly received in evidence as Defendant's Exhibit 27.)

(The reading from the deposition resumed):

"In this telegram, Mr. von Opel, the statement is made: 'My son's capital is working for Germany since return was always a matter of course for us. I shall cause my son to advise you how long it will take to wind up his American investments for the purpose of returning them'. Is that not correct?

"A. I had to send off this telegram for political reasons.

"Q. What did you mean your son's capital is working for Germany?

"A. If it increases over there it really works also for Germany since my son is a German.

"Q. But your son was no longer a resident of Germany after 1929, was he?

"A. No.

118 "Q. You said you sent this telegram for political reasons, what did you mean by that statement?

"A. The government was always after me to return these assets which did not belong to me any more and for political considerations I had to send off this telegram.

"Q. Mr. von Opel, were you a member of the Nazi party?

"A. Yes.

"Q. When did you join the Nazi party?

"A. I joined around July 20, 1933, but my membership dated back to April 1, 1933.

"Q. Were you a contributing member of the SS?

"A. Yes.

"Q. And how much was your contribution per month to the SS?

"A. So far as I can remember, one hundred marks.

"Q. Do you recall having been appointed by Adolph Hitler to the National Academy for German law?

"A. Yes.

"Q. When?

"A. I do not know when it was but about 1934 or so.

"Q. How many people were members of the Academy for German law?

"A. I have no idea.

"Q. Did you know Adolph Hitler, personally?

119 "A. I met him on an exhibition stand when he visited an automobile exhibition.

"Q. And did you have your picture taken with him at that time?

"A. I believe yes."

Mr. Baum: I will now skip to the middle of page 81, to the question reading "On the occasion of your 70th birthday"—

"Q. On the occasion of your 70th birthday did you receive a medal from Adolph Hitler?

"A. On my 70th birthday they wanted to confer upon me the golden party insignia but I refused that and I stated my wish that instead they give me the cross of merit in recognition of the services rendered by the motor car factory.

"Q. And did you at that time receive a personal telegram from Adolph Hitler?

"A. Yes.

"Q. Mr. von Opel, in 1933 did you have printed in a newspaper a call upon the people to vote for Adolph Hitler in March 1933?

"A. There was a call by the German industrialists which I also signed."

Mr. Baum: That is all the cross-examination which I desire to read, Your Honor.

(Mr. Laufer accordingly returned to the trial table from the witness stand.)

The Court: What is this Niessbrauch? What is the definition of that?

Mr. Burling: That is what I referred to yesterday, Your Honor, as a usufruct.

The Court: That is what I thought, but I wanted to make sure. I understood you were to have some testimony about it later, but I wanted to identify the word.

Mr. Burling: Yes, sir.

Mr. Gallagher: That is correct, Your Honor.

Page 32.

Mr. Ingoldsby (having assumed the witness stand): Just a minute. This is numbered differently. What are you starting with?

Mr. Gallagher (reading from deposition): This is—

"WILHELMINE DERN nee UEBEL, a witness, who, having been first duly sworn was examined and testified as follows:

Direct Examination

"By Mr. Connor:

"Q. Mrs. Dern will you give your full name for the record?

"A. Wilhelmine Dern.

"Q. What was your full maiden name?

"A. Wilhelmine Uebel.

121 "Q. Where do you live, Mrs. Dern?

"A. In Frankfurt.

"Q. Do you know Wilhelm von Opel?

"A. Since July 1, 1918.

"Q. Were you ever employed by him?

"A. 13 years.

"Q. During what period?

"A. July 1, 1918 to June 30, 1923 and then from March 1, 1927 to December 31, 1934.

"Q. And in what capacity were you employed?

"A. Private secretary.

"Q. Were you his first secretary during that period?

"A. Yes, I was the first secretary during this period."

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 25-A the property tax return of Wilhelm von Opel for 1931.

(The document was accordingly marked for identification as Plaintiff's Exhibit 25-A.)

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 25-B an amendment to exhibit 25-A.

(The amendment was marked for identification as Plaintiff's Exhibit 25-B.)

122 Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 25-C a document entitled "ZU IV: SONSTIGES VERMOEGEN." This is 25-C, now (handing to the Deputy Clerk).

(The document was marked for identification as Plaintiff's Exhibit 25-C.)

(The reading from the deposition was resumed, Mr. Gallagher reading the questions and Mr. Ingoldsby the answers):

"I will ask you if you prepared this property tax return, Exhibit 25-A?

"Mrs. Dern: Yes.

"Q. Have you prepared that under the direction of Mr. Wilhelm von Opel?

"A. I prepared the return, then I submitted it to Mr. Wilhelm von Opel who approved the statement prepared by me.

"Q. Did Mr. von Opel sign the original of this?

"A. Probably. I only signed once a tax return when Mr. von Opel was on a world trip. Every other return has been signed by himself.

"Q. Do you know whether the original of this one was signed by him?

"A. I am unable to answer this definitely yes or no since a long time has gone.

"Q. Well you just stated that you only signed one
123 return and he signed all the rest of them. Did you mean by that that he signed this one also?

"A. I don't know.

"Q. Was this a copy of the return which was sent to the tax office by Mr. von Opel in the year 1931?

"A. Yes, absolutely.

"Q. I will ask you if this is an amendment to Exhibit 25-A which was also filed with the proper tax authorities?

"A. Yes.

"Q. And this is an amendment to the tax return which is Exhibit 25-A, is that correct?

"A. Yes.

"Q. I will ask you if you can tell us what Exhibit 25-C is?

"A. That is a statement to the number of the property tax return referred to in this statement.

"Q. I will call your attention to the figure 3,710,566.— R. M. at the bottom of page 2 of Exhibit 25-A and to the same figure at the bottom of Exhibit 25-C and ask you if those two figures represent the same item?

"A. Yes.

"Q. Do you know whether Exhibit 25-C was filed with the tax authorities?

"A. Today I can't say any more whether it has
1124 been sent but I can say that the figure in the tax return itself has been taken from this sheet. If the original from this sheet is not any more in the files of Mr. von Opel, then it has been submitted to the tax office.

"Mr. Connor: May it be understood that these documents are papers from Mr. von Opel's files and he would like the privilege of substituting copies.

"Mr. Baum agreed to this."

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 26 the property tax assessment of Wilhelm von Opel as of January 1, 1931, which is dated August 2, 1932.

(The property tax assessment was marked for identification as Plaintiff's Exhibit 26.)

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 27 amended property tax assessment of Wilhelm von Opel as of January 1, 1931, which is dated the 25th of November, 1932.

(The amended property tax assessment was accordingly marked for identification as Plaintiff's Exhibit 27.)

Mr. Gallagher: I ask to have marked as Plaintiff's Exhibit 28 amended property tax assessment of Wilhelm von Opel as of January 1, 1931, which is dated June 23, 1934.

(The document was marked for identification as Plaintiff's Exhibit 28.)

125 (The reading from deposition resumed):

"I will now ask you whether those documents are assessments served upon Wilhelm von Opel and his wife on the basis of his 1931 property tax return, Plaintiff's Exhibit 25?

"A. Yes.

"Mr. Connor: It is understood that for all these papers taken from the files of Mr. von Opel, photostatic copies may be substituted.

"Mr. Baum: Yes."

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 29 a document entitled "ANZEIGE AUF GRUND DES VOLKSVERRATGESETZES"—"Report under the statute against National treason"—and dated October 27, 1933.

(The document was accordingly marked for identification as Plaintiff's Exhibit No. 29.)

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 29-A, a document consisting of seven pages, attached to Plaintiff's Exhibit 29.

(The seven-page document was accordingly marked for identification as Plaintiff's Exhibit 29-A.)

(The reading from deposition resumed):

"Q. Did you prepare Plaintiff's Exhibit 29, Mrs.
126 Dern?

"A. Yes.

"Q. And was that signed by Wilhelm von Opel?

"A. Yes.

"Q. And was that submitted to the Finanzamt at Wiesbaden? (Revenue office)

"A. Yes.

"Q. I will ask you whether Plaintiff's Exhibit 29-A was signed by Wilhelm von Opel?

"A. Yes.

"Q. And was Plaintiff's Exhibit 29-A submitted with Plaintiff's Exhibit 29 at Wiesbaden?

"A. It cannot be otherwise.

"Q. Would your answer be 'yes' that it was?

"A. Yes.

"Q. You were familiar with Mr. Wilhelm von Opel's business affairs, were you not?

"A. Yes.

"Q. And were you familiar with the facts which are contained in Plaintiff's Exhibit 29 and 29-A?

"A. Yes.

"Q. And are the statements contained in Plaintiff's Exhibits 29 and 29-A accurate statements?

"A. Yes.

Mr. Gallagher: I now offer these in evidence.

(The documents heretofore identified as Plain-
127 tiff's Exhibits 25 through 29-A were accordingly received in evidence.)

(The reading from the deposition was resumed as follows:)

"I will go back a moment to this return marked Plaintiff's Exhibits 25, 25-A and 25-B and I will ask you if from your familiarity with Mr. von Opel's business affairs, the statements contained in those exhibits are true to the best of your knowledge and belief?

"A. Yes, absolutely.

"Q. During any part of the time that you were secretary to Wilhelm von Opel, do you know of any demand that was made upon Fritz von Opel, the son, for any income from the property which was given to Fritz as a gift?

"A. No, I do not know anything of any incoming money from Fritz von Opel.

"Q. Did you ever know of any demand or request made by the father upon the son for any income from the property which he gave him as a gift?

"A. No.

"Q. Did you know of any income or any payments ever having been made by a company called Uebersee Finanz Korporation to Mr. Wilhelm von Opel?

"A. No.

"Q. Did you ever know of any income from a company called Spur Distributing Company?

128 "A. No.

"Q. Did you ever know of any income to Wilhelm von Opel from a company called Harvard Brewing Company?

"A. No.

"Q. Did you ever know of any income coming to Mr. von Opel from Amerlogene, Inc.?

"A. No.

"Q. I will call your attention to the bottom paragraph on page six of Exhibit 29-A and ask you if you can explain that paragraph, Mrs. Dern?

"A. Today I do not know any more exactly what that means but it has something to do with the gift contract.

"Q. Did any of Mr. von Opel's books reflect what that was?

"A. No, I do not believe.

"Q. Do you have any recollection of the size of the amounts referred to there?

"A. No.

"Q. Are Mr. von Opel's books for that period available at this time do you know?

"A. Since 1935 I had nothing to do with Mr. Wilhelm von Opel. I do not know.

"Q. If the amounts referred to in that paragraph were other than small amounts, would you know about it, Mrs. Dern?

129 "A. Perhaps. It is hard to say.

"Q. Well, you state that according to your knowledge and understanding that no payments had ever been made to Mr. von Opel out of the property which he had given to his son Fritz, is that correct?

"A. I don't know of any payment. Nothing came.

"Q. Nothing came to the office, is that correct?

"A. Yes.

"Q. Did you ever hear of the son making a small advance to the father when the father was on a shooting trip to Austria or Hungary?

"A. I don't remember.

"Q. Did you ever hear of an advance being made by the son to the father when he was on a world trip some time in the 1930's?

"A. No, I didn't hear of that.

"Q. I will call your attention to the fact that Wilhelm von Opel has heretofore testified that he has had two or three advances from his son.

"A. That might be outside of my knowledge.

"Q. And that these advances were made when on one occasion the old gentleman was on a hunting trip in Austria and on a world trip and on a third occasion. Is it possible that that reference in the paragraph at the bottom of page six was to those advances that

130 Wilhelm von Opel testified about?

"A. Absolutely possible.

"Q. When you said paragraph six had something to do with the gift, what did you mean by that?

"A. When I made my statement I had in mind that the statement has been made in relation to paragraph six. This paragraph six relates to the gift agreement. I do not know any more today what the substance of the statement means.

"Q. Then do I understand correctly that in paragraph six you had no intent to state that any income had come from Fritz von Opel from the property which was given in the gift?

"A. I don't know of any income given to Wilhelm von Opel from this property.

"Mr. Connor: Will you read the last paragraph on page six of Plaintiff's exhibit 29-A out loud for the record?

"A. 'I advanced occasionally amounts for my son. These advances have been repaid to me by my son. I only mentioned that to my protection because eventually a claim against my son as of 1933 might be seen therein.'

"Q. Does that paragraph mean that the father owed nothing to the son and the son owed nothing to the father?

"A. That means that the father advanced money
131 for the son which the son repaid again the father.

"Mr. Connor: I have asked the witness to read Plaintiff's Exhibit 7, being the letter dated October 3, 1931 from Dr. Max Hachenburg.

"I will also ask the witness to take a look at Plaintiff's Exhibit 5, the gift agreement.

"Q. Do you remember when this letter from Dr. Hachenburg was received by Mr. von Opel?

"A. Yes.

"Q. And do you remember the gift agreement which was drawn, a copy of which is Plaintiff's exhibit 5?

"A. Yes, I typed it.

"Q. By examining these two documents, can you tell when the gift agreement was drawn and signed?

"A. Yes, the date of Hachenburg's letter is obviously correct and the date of the gift contract is certainly correct too.

"Q. So that the gift agreement was executed on the 5th of October, 1931?

"A. Certainly on the date which is written on the document.

"Q. And where did you type this gift agreement?

"A. In my office in Ruesselsheim.

"Q. Do you know Wronker-Flatow?

"A. Yes.

132 "Q. Was he there at the time the gift agreement was executed?

"A. Yes."

(Mr. Laufer having replaced Mr. Ingoldsby on the witness stand, and Mr. Baum now reading the questions):

"*Cross Examination*

"The Witness: Mrs. Dern further testified as follows:

"By Mr. Baum:

"Q. Mrs. Dern, where do you live in Frankfurt?

"A. In Eisernhand 38.

"Q. How long have you lived there?

"A. Since March 1944.

"Q. When did your employment with Mr. von Opel terminate?

"A. December 31, 1934.

"Q. Did you take care of Mr. von Opel's personal affairs as well as his business affairs?

"A. Yes, both.

"Q. You testified that the gift agreement, Plaintiff's exhibit 3 was executed on the 5th of October, 1931. Who else was present when that gift agreement was executed?

"A. I cannot say precisely. I wrote the agreement.

"Q. But you know that Dr. Wronker-Flatow was
133 there?

"A. By all means.

"Q. And Mr. von Opel and Mrs. von Opel and Fritz von Opel signed the agreement in your presence on that day?

"A. I was not present when the agreement was signed.

"Q. Then you were only present when it was typed on the machine, is that correct?

"A. Yes.

"Q. And you typed the date the 5th of October 1931 on it, did you not?

"A. On the day when I wrote it, yes.

"Q. But you don't know on what date it was signed, do you?

"A. I must think about it how it was. I cannot say for certain, I was not present.

"Q. When Mr. Connor asked you when the agreement was executed you said it was October 5, 1931, are you now saying that was not correct?

"A. He did not ask when the agreement was signed, he asked when the agreement was typed.

"Q. So that when you said it was made on October 5 you only meant it was typed on October 5?

"A. Yes.

"Q. And you have no idea of when it was signed?
134 "A. I believe for certain on the same day.

"Q. How do you know it was signed on that day?

"A. I do not know it but I believe it was.

"Q. I ask the witness to read Plaintiff's exhibit 8, the Hachenburg draft of the gift agreement. Now I'll ask the witness, have you ever seen the document which I have shown you?

"A. At that time, yes.

"Q. Did you use this document in typing the gift agreement, Plaintiff's exhibit 5?

"A. I do not recall any more.

"Q. What did you use in typing Plaintiff's exhibit 5?

"A. I do not remember any more. It may have been a dictation by Wronker-Flatow. I do not remember."

Mr. Baum: I will now skip to the top of page 43, the following page.

Mr. Gallagher: Just a moment, please.

Mr. Baum: Surely—

"Q. After you typed the original of Plaintiff's Exhibit 5, what did you do with it?

"A. I have taken it to Mr. von Opel to his room.

"Q. And you never saw it signed?

"A. I saw it later but I do not remember if I saw it on the same day.

135 "Q. And do you know of your own knowledge when this agreement was actually signed by Wilhelm von Opel, Fritz von Opel and Marta von Opel?

"A. I was not present but I can assume that it was on the same day because Mr. Wilhelm von Opel wanted the typing to be done.

"Mr. Baum: I ask Mr. Laufer (interpreter) to explain to the witness that the question asks whether she of her own knowledge knew and not what she can assume.

"A. I cannot say it when I was not present when it was signed."

Mr. Baum: That is all of the cross-examination, Your Honor.

(Mr. Laufer having returned to the trial table, and Mr. Ingoldsby having replaced him in the witness chair, to read the answers):

Mr. Gallagher: On page 136—

"*Redirect Examination, Mrs. Dern*

"I ask to have marked as Plaintiff's exhibit 5-A another copy of the gift agreement headed: 'Ruesselsheim, den 5. Oktober 1931'. (Ruesselsheim, dated 5 October 1931.)"

Now—

"We have asked you to come here from Frankfurt
136 again today, Mrs. Dern, to have you identify documents which were not shown to you the other day. I will hand you Plaintiff's exhibit 5-A and ask you to look it over. I will direct your attention particularly to the handwriting on the first page thereof opposite the word 'abschrift'. Whose handwriting is that?

"A. Mine.

"Q. By reference to that handwriting, can you now tell us whether Plaintiff's exhibit 5-A was unquestionably a copy of the original gift agreement?

"A. Yes.

"Q. Have you seen that document, Plaintiff's exhibit 5-A at any time since you left the employ of Wilhelm von Opel?

"A. No. I see it for the first time today.

"Q. And by that answer you mean that today is the first time that you have seen this document since you left the employ of Wilhelm von Opel?

"A. Yes.

"Mr. Connor: I offer Plaintiff's exhibit 5-A in evidence.

"Q. I will show you Plaintiff's exhibit 45 and ask you if that document was sent on behalf of Wilhelm von Opel to the Finanzamt Wiesbaden on or about January 2,
137 1932?

"A. I must assume that for sure. I did not type it myself,

"Q. I will show you Plaintiff's Exhibit 38 and ask you if that is the preliminary tax assessment served upon Wilhelm von Opel by the Finanzamt Wiesbaden?

"A. Yes.

"Q. I will show you Plaintiff's Exhibit 39 and ask you if that is a copy of the reply sent to the Finanzamt Wiesbaden in response to Plaintiff's Exhibit 38?

"A. Yes.

"Q. I will show you Plaintiff's Exhibit 40 and ask you if that is the further tax assessment served upon Wilhelm von Opel by the Finanzamt Wiesbaden?

"A. Yes.

"Q. I will show you the envelope, Plaintiff's Exhibit 40-A and ask you if that was the envelope in which Plaintiff's Exhibit 40 was sent to Wilhelm von Opel?

"A. Certainly.

"Q. I will show you Plaintiff's Exhibit 41 and ask you if that is a copy of a letter which was sent to Wilhelm von Opel's office by Dr. Faust purporting to be a copy of a letter which Dr. Faust had sent to the Finanzamt at
138 Wiesbaden?

"A. That is certainly the case, it cannot be different.

"Q. I have asked you to examine every page in this book, Plaintiff's Exhibit 42 and now I ask you if you have examined every page in Plaintiff's Exhibit 42?

"A. Yes.

"Q. And who made the entries on all of the pages in that book?

"A. I made all the entries. There are some insignificant notes in the books written by someone else. These notes have been made after I left.

"Q. I will ask you if there are any pages in this book which refer to any business transactions of Wilhelm von Opel and Fritz von Opel?

"A. There is one Opel shares page in the book.

"Q. I will show you Plaintiff's Exhibit 42-A and ask you if that is the page you refer to?

"A. Yes.

"Q. And is that the only page in Plaintiff's Exhibit 42 which refers to any business transactions involving Fritz von Opel?

"A. The only one.

"Q. Is this book a complete record of the investments, that is bonds and securities, of Wilhelm von Opel covering the period from January 1, 1930 up until the time
139 you left the employ of Wilhelm von Opel?

"A. Yes.

"Q. I call your attention to the fact that on the back cover of this book there appear the dates from January 1, 1930 until December 31, 1935 and also call your attention to the fact that you left Wilhelm von Opel's employ on December 31, 1934. I ask you to explain that notation on the cover of the book.

"A. I began this book on January 1, 1930. Before this time there was only very sketchy bookkeeping of the investments. Why the final date on the book shows the note to December 31, 1935, I do not know. I do not know whether they began a new book of similar type or not at that time.

"Q. But all the entries in the books except for a few insignificant notations were made by you, were they not?

"A. Yes."

(During the reading from the deposition, just preceding, the documents referred to were marked accordingly as Plaintiff's Exhibits 45, 38, 39, 40, 40-A, 41, 42, 42-A.)

Mr. Gallagher: I now ask to have marked Plaintiff's Exhibit 54, a loose-leaf book and its contents—"Buchhaltung-1937."

140 (The loose-leaf book was marked for identification as Plaintiff's Exhibit 54.)

Mr. Gallagher: I also ask to have marked Plaintiff's Exhibit 55, a loose-leaf book and its contents, "Buchhaltung—1938."

(The loose-leaf book for 1938 was accordingly marked for identification as Plaintiff's Exhibit 55.)

Mr. Gallagher: I will also ask to have marked as Plaintiff's Exhibit 56 a loose-leaf book and its contents, "Buchhaltung—1939."

(The loose-leaf book for 1939 was marked for identification as Plaintiff's Exhibit 56.)

Mr. Gallagher: I will also ask to have marked as Plaintiff's Exhibit 57 a loose-leaf book and its contents, "Buchhaltung—1940."

(The loose-leaf book for 1940 was marked for identification as Plaintiff's Exhibit 57.)

Mr. Gallagher: (Resuming reading from the deposition)—

"I will show you Plaintiff's exhibits 54, 55, 56, and 57 and I will ask you if you can tell us what those exhibits are.

"A. The bookkeeping statements of Mr. Wilhelm von Opel for the years 1937, 1938, 1939 and 1940.

141 "Q. Are those books, Plaintiff's exhibits 54, 55, 56 and 37 a complete bookkeeping record of all of Wilhelm von Opel's income and expenditures during the years covered by the books?

"A. Yes."

Mr. Gallagher: I now offer those books in evidence.

(The loose-leaf books identified as Plaintiff's Exhibits 54, 55, 56 and 57 were received in evidence.)

Mr. Baum: No recross-examination, Your Honor.

Mr. Gallagher: Now turn to page 48, please—

"There has been marked as Plaintiff's Exhibit 30, property tax return of Wilhelm von Opel for the year 1935 to the Finanzamt at Wiesbaden, dated June 7, 1935."

(The property tax return was marked for identification as Plaintiff's Exhibit No. 30.)

"There has been marked as Plaintiff's Exhibit 30-A attachment I to paragraph IV A of Exhibit 30."

(The attachment was marked for identification as Plaintiff's Exhibit 30-A.)

"There has been marked as Plaintiff's Exhibit 30-B I attachment II to paragraph IV a, Exhibit 30."

(The attachment II to Plaintiff's Exhibit 30 was marked for identification as Plaintiff's Exhibit 30-B.)

142 Mr. Burling: I am confused. I am not objecting. But you said that was all for the witness Dern. I don't know exactly what you are doing now. Are you interrogating a witness?

Mr. Gallagher: No; I am starting with—Excuse me just a moment—I am merely identifying all these documents before we start with the witness Esklony.

Mr. Burling: I have no objection, but it is an unusual procedure.

Mr. Gallagher: You want me to eliminate those pages, or this page, from the deposition, then? We will save time if we get them all marked at one time.

Mr. Burling: Very well.

Mr. Gallagher: She is going to refer to all these exhibits in her testimony.

Mr. Burling: I understand this is preparatory to the testimony of Esklony?

Mr. Gallagher: Yes, sir—

"There has been marked as Plaintiff's Exhibit 30-C attachment III to paragraph IV a of Exhibit 30."

(The attachment III to Plaintiff's Exhibit 30 was accordingly marked for identification as Plaintiff's Exhibit 30-C.)

"There has been marked as Plaintiff's Exhibit 30-D attachment 4 to paragraph IV b, of Exhibit 30."

143 (Attachment IV was marked for identification as Plaintiff's Exhibit 30-D.)

"There has been marked as Plaintiff's Exhibit 30-E attachment 5 to paragraph IV f, of Exhibit 30."

(Attachment 5 was marked for identification as Plaintiff's Exhibit 30-E.)

"There has been marked as Plaintiff's Exhibit 30-F attachment 6 to paragraph V a, of Exhibit 30."

(Attachment 6 was accordingly marked for identification as Plaintiff's Exhibit 30-F.)

"There has been marked as Plaintiff's Exhibit 31, preliminary property tax assessment as of January 1, 1935, dated May 5, 1936, addressed to Mr. and Mrs. Wilhelm von Opel."

(The preliminary property tax assessment was marked for identification as Plaintiff's Exhibit No. 31.)

"There has been marked as Plaintiff's Exhibit 32, final property tax assessment for the year 1935, bearing the hand-written date January 23, 1939, and having stamped thereon the date January 30, 1939."

(The final property tax assessment was marked for identification as Plaintiff's Exhibit No. 32).

"There has been marked as Plaintiff's Exhibit 33, amended property tax assessment as of January 1, 1935, bearing the hand-written date May 5, 1939, and stamped May 6, 1939, addressed to Wilhelm von Opel."

(The amended property tax assessment was marked for identification as Plaintiff's Exhibit No. 33.)

"There has been marked as Plaintiff's Exhibit 34, property tax return of Wilhelm von Opel for the year 1940, dated March 21, 1940."

(The property tax return was marked for identification as Plaintiff's Exhibit 34.)

"There has been marked as Plaintiff's Exhibit 34-A attachment I."

(Attachment I was marked for identification as Plaintiff's Exhibit No. 34-A.)

"There has been marked as Plaintiff's Exhibit No. 34-B attachment II."

(Attachment II was marked for identification as Plaintiff's Exhibit 34-B.)

"There has been marked as Plaintiff's Exhibit 34-C attachment III."

(Attachment III was marked for identification as Plaintiff's Exhibit 34-C.)

"There has been marked as Plaintiff's Exhibit No. 35 the report of claims against 'enemies residing in
145 foreign countries,' dated September 28, 1940."

(The report of claims, etc., was marked of identification as Plaintiff's Exhibit No. 35.)

"There has been marked as Plaintiff's Exhibit 35-A, letter dated September 28, 1940, which is a letter of transmittal of Exhibit 35."

(The letter was marked for identification as Plaintiff's Exhibit No. 35-A.)

The Court: I guess this is a convenient place to stop?
Mr. Gallagher: Yes, sir.
The Court: Until 2 o'clock.

(Accordingly, at 12:35 p.m., the luncheon recess was taken until 2 o'clock this afternoon.)

* * * * * *

146 AFTERNOON SESSION

Deposition of EDITH ESKLONY

Mr. Gallagher: Page 49.

(The reading from this deposition, Mr. Gallagher the questions, and Mr. Ingoldsby, in the witness chair, the answers, proceeded as follows):

"Edith Esklony, a witness, was called, and having been first duly sworn, was examined and testified as follows:

"Direct Examination

"By Mr. Connor:

"Q. Miss Esklony, will you give your full name?

"A. Edith Esklony.

"Q. And where do you live at the present time?

"A. In Wiesbaden.

"Q. How long have you lived in Wiesbaden?

"A. Since my birth.

"Q. What is your exact address?

"A. Dambachtal 13.

"Q. Do you know Mr. Wilhelm von Opel?

"A. Yes.

"Q. Are you presently employed by him?

"A. Yes.

"Q. How long have you been employed by him?

"A. Since February 1, 1932.

"Q. And in what capacity are you presently em-
147 ployed by Mr. von Opel?

"A. As private secretary.

"Q. Are you now his only private secretary?

"A. Yes.

"Q. And when did you first become his chief private secretary?

"A. In the fall of 1939.

"Q. And who was his chief private secretary prior to that time?

"A. Miss Bertha Frentzel.

"Q. Where does she live?

"A. In Ruesselsheim.

"Q. Do you know her street address?

"A. No, I don't know exactly.

"Q. Do you know whether the name which you have given is her present name?

"A. Yes.

"Q. When you first went to work for Mr. von Opel in 1932 who was his chief secretary?

"A. Miss Uebel, now married, her name is Mrs. Dern.

"Q. And that is the same Mrs. Dern who testified yesterday, is it not?

"A. Yes.

"Q. And from 1932 up until 1939 were you an assistant secretary to Mr. Wilhelm von Opel?

148 "A. Yes.

"Q. And during the entire time you were either assistant secretary or secretary, had you become quite familiar with the business affairs of Mr. von Opel?

"A. Yes.

"Mr Connor: I will show the witness Plaintiff's Exhibit No. 30 and Plaintiff's Exhibits No. 30-A through No. 30-F and ask her to look at them.

"Q. Did you prepare those documents, Plaintiff's Exhibits No. 30 and No. 30-A through No. 30-F?

"A. Yes, together with Miss Frentzel.

"Q. And were you familiar with the facts contained in Plaintiff's Exhibits No. 30 and No. 30-A through No. 30-F?

"A. Yes, on the basis of the material and books.

"Q. I will ask you to take a look at the word 'Wiesbaden' stamped at the top of page one of Plaintiff's Exhibit No. 30 and ask if that stamp was put on by the tax office at Wiesbaden?

"A. Yes.

"Q. Can you say whether Plaintiff's Exhibit No. 30 was filed with the Finanzamt at Wiesbaden?

"A. Yes, the original of this document.

"Q. Wasn't this document also presented to the Finanzamt at Wiesbaden since it was stamped by the

149 Wiesbaden tax office?

"A. We received these forms from the Finanzamt at Wiesbaden.

"Q. Is that a true copy of the original which was filed with the Finanzamt at Wiesbaden?

"A. Yes.

"Q. And filed at the direction of Mr. Wilhelm von Opel?

"A. Yes.

"Q. And was the original of Plaintiff's Exhibit No. 30 signed by Wilhelm von Opel at the time it was filed?

"A. No, it was signed by Dr. Faust.

"Q. And Dr. Faust was Mr. Wilhelm von Opel's tax expert who handled his tax matters?

"A. Yes.

"Q. And before it was filed was it approved by Mr. Wilhelm von Opel?

"A. Either it was given to him before it was filed or it was submitted to him afterwards for his examination.

"Q. But this document was the document filed as the property tax return for Wilhelm von Opel for the year 1935, was it not?

"A. Yes.

"Q. Will you tell us what Plaintiff's Exhibit No. 150 30-A is?

"A. This document reports the list of securities which has been attached to the property tax return.

"Q. What is Plaintiff's Exhibit No. 30-B?

"A. That is the list of bonds held prior to a certain statutory date. This list was attached to the original of the property tax return.

"Q. What is Plaintiff's Exhibit No. 30-C?

"A. This list of the securities bringing dividends was also attached to the original tax return.

"Q. What is Plaintiff's Exhibit No. 30-D?

"A. This is the list of the mortgages and loans. This list too was attached to the origanal of the tax return.

"Q. What is Plaintiff's Exhibit No. 30-E?

"A. This is a statement relating to paragraph No. 4 of the tax return which in the original was attached to the tax return.

"Q. What is Plaintiff's Exhibit No. 30-F?

"A. This is a statement which has been given to paragraph No. 5-a of the tax return. This statement too was in the original attached to the tax return."

Mr. Gallagher: I now offer Plaintiff's Exhibits 30 and 30-A through 30-F.

151 (The documents heretofore identified as Plaintiff's Exhibits 30 and 30-A through 30-F were accordingly received in evidence.)

(The reading from the deposition follows):

"I will ask the witness to examine Plaintiff's Exhibit No. 31.

"Q. Is that the preliminary tax assessment served upon Mr. Wilhelm von Opel by the Finanzamt at Wiesbaden for the year 1935?

"A. Yes."

Mr. Gallagher: I offer Plaintiff's Exhibit 31.

(Plaintiff's Exhibit 31 was received in evidence.)

(The reading from the deposition resumed):

"I ask the witness to examine Plaintiff's Exhibit No. 32.

"Q. Is that a document entitled 'final property tax assessment as of January 1, 1935,' served upon Wilhelm von Opel?

"A. Yes."

Mr. Gallagher: I offer Plaintiff's Exhibit 32.

(Plaintiff's Exhibit 32 was now received in evidence.)

(The reading proceeding):

"I will ask the witness to examine Plaintiff's Exhibit No. 33."

"Q. Is that a document entitled 'property tax assessment as of January 1, 1935', served on Wilhelm von Opel?

152 "A. Yes."

Mr. Gallagher: I now offer Plaintiff's Exhibit 33.

(Plaintiff's Exhibit 33 was received in evidence.)

(The reading from the deposition resumed):

"I will ask the witness to examine Plaintiff's Exhibits Nos. 34, 34-A, 34-B and 34-C.

"Q. Are Plaintiff's Exhibits Nos. 34 and 34-A, 34-B and 34-C, true copies of the property tax return for the year 1940 filed by Wilhelm von Opel with the Finanzamt at Wiesbaden?

"A. Yes.

"Mr. Connor: I will call your attention to page three of Plaintiff's Exhibit No. 34 paragraph IV-c and ask you if there are not some references made to other attachments than exhibits Nos. 34-A, 34-B, and 34-C?

"A. These exhibits were the original bank statements of the banks. As far as I can remember, we attached the original of the bank statements because to copy these statements would have been a too difficult job.

"Q. Is that complete with the exception of those bank statements referred to in paragraph IV-c?

"A. Yes.

"Q. These exhibits constitute the full property tax return filed by Wilhelm von Opel for that year?

153 "A. Yes.

"Mr. Connor: I ask the witness to examine Plaintiff's Exhibits No. 35 and No. 35-A.

"Q. I will ask you to tell what Plaintiff's Exhibit No. 35 is?

"A. A report of claims against enemies residing in foreign countries.

"Q. Is that document, Plaintiff's Exhibit No. 35, signed by you?

"A. Yes.

"Q. As secretay for Mr. Wilhelm von Opel?

"A. Yes.

"Q. And was this document filed with the Oberfinanzpræsident at Berlin?

"A. Yes it was sent there with a letter of transmittal.

"Q. Is that the letter, Plaintiff's Exhibit No. 35-A?

"A. Yes."

Mr. Gallagher: I offer Plaintiff's Exhibits 34, 35, and 35-A. I also offer 34-A, B, and C.

(The documents heretofore identified as Plaintiff's Exhibits 34, 34-A, 34-B, 34-C, and 34 and 35-A were received in evidence.)

(The reading from the deposition resumed):

154 "After the United States and Germany were at war, did Wilhelm von Opel ever file any similar type of report with the German authorities?

"A. I don't know. I cannot say.

"I will ask to have the witness examine Plaintiff's Exhibits Nos. 36 and 37.

"I have had marked as Plaintiff's Exhibit No. 36, a copy of a letter to the Reichsbankstelle at Wiesbaden, dated April 16, 1937 from Wilhelm von Opel and have had marked as Plaintiff's Exhibit No. 37, report of claims arising from financial transactions with the United States, dated April 16, 1937.

"Mr. Connor: I will now ask the witness, do you know whether in the first half of 1937 there was a German law

which required reporting any financial transactions with persons in foreign countries?

"A. Yes.

"Q. And were exhibits Nos. 36 and 37 filed in compliance with that requirement of German law?

"A. Yes.

"Q. And they were filed with the Reichsbank at Wiesbaden, were they not?

"A. Yes.

"Q. Do these two documents represent Wilheim von Opel's report of all claims of any kind against persons in the United States?

"A. Yes."

Mr. Gallagher: I now offer Plaintiff's Exhibits 36 and 37.

(Documents identified as Plaintiff's Exhibits 36 and 37 were received in evidence.)

Mr. Gallagher: I now turn to page 84—

"I ask to have marked as Plaintiff's Exhibit No. 38 copy of the preliminary gift tax assessment of the Finanzamt at Wiesbaden, dated January 7, 1932, addressed to Wilhelm von Opel."

"I will show Plaintiff's Exhibit No. 38 to the witness. Is that a copy of the preliminary tax assessment served on Wilhelm von Opel by the Finanzamt at Weisbaden?

"A. Yes.

"Q. I will ask the witness to take a look at Plaintiff's Exhibit No. 39. Was Plaintiff's Exhibit No. 39 filed by Wilhelm von Opel in response to request contained under column 10 on the third page of Plaintiff's Exhibit No. 38?

"A. Yes.

"Mr. Connor: I show the witness Plaintiff's Exhibits No. 40 and No. 40-A. Is this Exhibit No. 40 the further preliminary tax assessment served upon Mr. Wilhelm
156 von Opel by the Finanzamt Wiesbaden?

"A. Yes.

"Q. And is Exhibit No. 40-A the envelope in which Exhibit No. 40 was sent to Wilhelm von Opel?

"A. Yes.

"Q. Is Exhibit No. 41 a copy of a letter sent to the Finanzamt Wiesbaden by Dr. Faust on behalf of Wilhelm von Opel?

"A. Yes."

Mr. Gallagher: I now offer Plaintiff's Exhibits 38, 39, 40, 40-A and 41.

(The documents heretofore identified as Plaintiff's Exhibits 38, 39, 40, 40-A and 41 were accordingly received in evidence.)

(The reading from the deposition resumed):

"Q. I believe you stated you came to work for Mr. Von Opel first on February 1, 1932, is that correct?

"A. Yes.

"Q. I believe you stated that until some time in 1939 you were assistant secretary?

"A. Yes I convinced myself that it was July 1, 1939.

"Q. And although you were not first secretary to Mr. von Opel up to that period in 1939, I believe you stated you acquired an accurate familiarity with his books and records, is that so?

157 "A. Yes.

"Q. And a familiarity with his business affairs?

"A. Yes.

"Q. At any time after you went to work for Mr. von Opel did you have anything to do with drafting the gift agreement, Exhibit No. 5?

"A. No.

"Q. Were your duties such that you would have known if the gift agreement had been typed after you came to work for Mr. von Opel?

"A. Yes.

"Q. Were you familiar with the book in which the record of the shares owned by Mr. Wilhelm von Opel was kept?

"A. Yes.

"Q. And did those books at any time after you went to work for Mr. von Opel carry the 600 shares of Adam Opel stock which was the subject of the gift agreement as owned by Wilhelm von Opel?

"A. No."

Mr. Gallagher: Now down to the bottom of the page:

"Q. After you came to work for Mr. von Opel in February 1932 did his books of account ever carry or contain any General Motors shares which were the proceeds of the 600 shares of Adam Opel stock?

"A. No, I don't know of any.

158 "Q. Did Wilhelm von Opel's books of account ever carry any share ownership in the Uebersee Finanz Korporation?

"A. No.

"Q. Or any accounts or debts receivable from Uebersee Finanz Korporation?

"A. No.

"Q. Did the books of account ever carry any shares of stock of a company called the Spur Distributing Company?

"A. No. Just at this moment I learned this name.

"Q. Did Wilhelm von Opel's books of account ever carry any shares of stock in a company called the Harvard Brewing Company?

"A. No. This name, too, I learned the first time today.

"Q. Did Wilhelm von Opel's books of account ever carry any shares of stock in a company called Amerlagene?

"A. No, this name too, I learned the first time now.

"Q. Did his books of account ever carry any shares of stock in a company called the Hurricane Oil Company?

"A. No.

"Q. Did Wilhelm von Opel, to your knowledge, ever have any communication with companies by those names or any companies with names similar to them?

"A. No, I don't know of it.

159 "Q. Do you know of any report ever made by Dr. Faust in respect to the Uebersee Finanz Korporation?

"A. No.

"Q. Or any report by Dr. Faust in respect to the Spur Distributing Company, Harvard, Amerlagene Inc., or the Hurricane Oil Company?

"A. No.

"Q. Do you recollect any written communication at all in the files or papers of Wilhelm von Opel from Dr. Hanns Frankenburg?

"A. No, not in regard to commercial matters.

"Q. Will you state whether or not, to your knowledge, any payments of money were ever made to Wilhelm von Opel by Uebersee Finanz Korporation, Spur Distributing Company, Harvard, Amerlagene, Inc., or Hurricane?

"A. No, I did not make any book entries in regard to those payments and I have not seen such book entries.

"Q. If any payments had been made from these companies would your duties not have been such that you would have known about such payments?

"A. Yes, even in cases where I have not made the book entries myself I would have seen such book entries whenever I prepared the income tax return or similar returns.

"Q. Was there an account in any of Mr. Wilhelm
160 von Opel's books in respect to Fritz von Opel?

"A. Yes, in the book kept by Mrs. Dern covering the year 1934 and probably years before. Later on we had no account 'Fritz von Opel'.

"Q. Did you ever see the account 'Fritz von Opel'?

"A. Yes, I remember."

Page 93.

(The reading from the deposition continued:)

"Q. Miss Esklony, did you at my request go to Ruesselsheim this morning for the purpose of ascertaining whether Wilhelm von Opel's books of account were still in existence?

"A. Yes.

"Q. And where did you go in Ruesselsheim to look for those books?

"A. In the room in which we put the files when Mr. Wilhelm von Opel had to abandon his room suddenly.

"Q. And what was the date when Mr. Wilhelm von Opel had to abandon his office suddenly?

"A. In October 1945.

"Q. And did you find any books of account this morning?

"A. Yes.

"Q. And did you bring them here?

"A. Yes.

161 "Q. And those books which you got are now in the room, are they not?

"A. Yes.

"Q. And prior to this morning, when did you last see those books?

"A. In October 1945.

"Q. You say that Mr. Wilhelm von Opel had to abandon a certain office or room that he had to leave?

"A. His two office rooms.

"Q. Where were those two office rooms located?

"A. In the Adam Opel, A.G.

"Q. Who put him out of those offices?

"A. The trustee of Adam Opel, A.G., who has now been appointed.

"Q. How long did he give Mr. von Opel to get out of those offices?

"A. Only one day.

"Q. And then where did he move his files and materials?

"A. A large part has been burned and another part has been put in a room situated in a house close to the office. This house is administered by a Mr. Uebel.

"Mr. Connor: I ask to have marked as Plaintiff's Exhibit No. 42, closed out share accounts, January 1930 to December 31, 1935. (ERLEDIGTES AKTIENBUCH) It
162 is agreed that this book will be referred to as his investment record.

"Mr. Baum: I would like to have the record show that this is a loose-leaf binder.

"Q. Mr. Connor: I will show the witness Plaintiff's Exhibit No. 42 and ask her to state what that book is?

"A. That is a book which covers all investments of Mr. Wilhelm von Opel for the period January 1930 to December 31, 1935."

Mr. Gallagher: I now offer Plaintiff's Exhibit 42.

(The book heretofore identified as Plaintiff's Exhibit 42 was received in evidence.)

(The reading from the deposition continued:)

"Did you make the entries which appear in this book, Plaintiff's Exhibit No. 42?

"A. No, Mrs. Dern did.

"Q. Are you familiar with the entries which are made in that book from your knowledge of Mr. Wilhelm von Opel's business affairs?

"A. Yes.

"Q. Do you know whether that is a complete record of Mr. Wilhelm von Opel's investment accounts for the period covered by the book?

"A. Yes.

"Mr. Connor: I will ask to have marked as Plain-
163 tiff's Exhibit No. 42-A a page in Plaintiff's Exhibit No. 42 bearing the heading: 'The National City Bank, New York, New York, 55 Wall Street.

"Q. I will ask the witness if that page refers to the gift to Fritz von Opel?

"A. Yes. Mrs Dern made the note: 'By gift to Fritz von Opel compare document of October 5, 1931'."

Mr. Gallagher: Plaintiff's Exhibit 42 has been offered in evidence, and Plaintiff's Exhibits 42-A, as a part of Plaintiff's Exhibit 42, is also offered.

(Plaintiff's Exhibit 42-A was now received in evidence.)

Mr. Gallagher: I will ask to have marked as Plaintiff's exhibit 43 a book which contains income and expenses for Mr. Wilhelm von Opel during the year 1935.

(The book was marked for identification as Plaintiff's Exhibit 43.)

(The question and answer were then read:)

"I will show the witness Plaintiff's Exhibit 43 and ask her to state for the record what that book is?

"A. That is the book which contains all income and expenses of Mr. Wilhelm von Opel during the year 1935."

Mr. Gallagher: I now offer Plaintiff's Exhibit 43.

(The book heretofore identified as Plaintiff's Exhibit 43 was received in evidence.)

164 (The reading from the deposition resumed:)

"Mr. Baum: I would like the record to show that this is also a looseleaf binder.

"Mr. O'Connor: I will ask to have marked Plaintiff's Exhibit No. 44, a book which contains income and expenses for Mr. Wilhelm von Opel during the year 1936."

(The book referred to was now marked for identification as Plaintiff's Exhibit 44.)

(The question and answer then followed:)

"I will show the witness Plaintiff's Exhibit No. 44 and ask her to describe what it is.

"A. That is the bookkeeping book containing all income and expenses for Mr. Wilhelm von Opel during the year 1936."

Mr. Gallagher: I now offer Plaintiff's Exhibit 44.

(The book heretofore identified as Plaintiff's Exhibit 44 was received in evidence.)

(The reading from the deposition, continued:)

"Mr. Baum: I would like the record to show that this is also a looseleaf binder.

"Mr. Connor: Now in Plaintiff's Exhibit No. 43, is there any page which has referred to Fritz von Opel?

"A. Only the page entitled 'Patent Account'. This account contained payments made for patents belonging to Fritz von Opel.

165 "Mr. Connor: The entire book has been offered in evidence but for purposes of clarity I will ask to have the page referred to, marked as Plaintiff's Exhibit No. 43-A."—the page entitled "Patent Account".

(The page referred to was marked for identification as Plaintiff's Exhibit 43-A.)

"Mr. Connor: Will you briefly and generally describe what those entries refer to on Plaintiff's Exhibit No. 43-A?

"A. The entries made on this page refer almost all to payments made to Mr. Dyhr, the patent technician of Fritz von Opel.

"Q. Who paid those amounts?

"A. Mr. Wilhelm von Opel.

"Mr. Connor: I will ask to have marked as Plaintiff's Exhibit No. 44-A a page in Exhibit No. 44 entitled 'Patent-Konto'." This page is marked merely for purpose of identification, the whole book having been offered in evidence.

"Mr. Connor: I ask the witness to take a look at Plaintiff's Exhibit No. 44-A. I will ask you to describe for the record what the entries on that page are.

"A. On this page there are entered the payments made by Mr. Wilhelm von Opel to Mr. Dyhr during the year 1926.

166 "Q. Are there any other pages in Plaintiff's Exhibit No. 44 which refer to any transactions of or with Fritz von Opel?

"A. No.

"Q. When you went to Ruesselsheim this morning to look for the books of Wilhelm von Opel did you look for books of account prior to 1935, that is preceding the time covered by Plaintiff's Exhibit No. 43?

"A. Yes.

"Q. And did you look very diligently for those books?

"A. Yes.

"Q. Did you find those books?

"A. No, I am sorry.

"Q. Have you any idea of what became of those books of account preceding the year 1935?

"A. As far as I remember there is only one book involved and this one book has been burned.

"Q. When?

"A. The day when we vacated in October 1945.

"Q. You said that you looked for those books for the period to 1935 this morning?

"A. Yes.

"Q. When you were looking for them you had no distinct recollection of them having been burned, did you?

167 "A. No. Otherwise I wouldn't have looked for them.

"Q. What makes you think that they were or may have been burned?

"A. It was a different type of book involved than the books presented to me before. In 1935 they established another system of bookkeeping.

"Q. Why were these other books of account not burned in 1945?

"A. I wanted to have retained all the books belonging to the new bookkeeping system, so that the new bookkeeping system would remain complete.

"Q. Were you short of office space or did you have such reasons as that for getting rid of the books prior to 1935?

"A. No, absolutely. If we would have considered these books of special importance we could have found the space to keep them. The period during which the books had been kept was already lowered to ten years and later to five years.

"Q. By whom?

"A. By law.

"Q. Was it your purpose then at the time that the books prior to 1935 were destroyed to continue to keep those books which were required to be kept under the law?

168 "A. This was at least one of the reasons.

"Q. Well, in 1945, of course the books prior to 1935 were old books, were they not?

"A. Yes, very old. Mr. Wilhelm von Opel wanted to burn them all.

"Q. That is those old books prior to 1935?

"A. Yes, he wanted to burn all old books.

"Q. When the books were burned, was there any purpose in concealing information in those books from anybody?

"A. No.

"Mr. Connor: I will ask to have marked as Plaintiff's Exhibit No. 45 copy of a letter to the Finanzamt, Wiesbaden, dated January 2, 1932 and sent by or on behalf of Wilhelm von Opel.

"Q. I call your attention particularly to the handwriting at the bottom of Plaintiff's Exhibit No. 45 and ask you if you know whose handwriting that is?

"A. That is the handwriting of Mr. Hagemann.

"Q. Who was Mr. Hagemann?

"A Customs investigator."

Mr. Gallagher: I now offer Plaintiff's Exhibit 45.

(Plaintiff's Exhibit 45 was now received in evidence.)

169 "I will ask to have marked as Plaintiff's Exhibit No. 45-A an excerpt from a newspaper of stock quotations."

(The newspaper excerpt was marked for identification Plaintiff's Exhibit 45-A.)

Mr. Gallagher: I now offer Plaintiff's Exhibit 45-A.

(The exhibit identified as Plaintiff's No. 45-A was now received in evidence.)

(Further from the deposition:)

"Miss Esklony, are the books of account of Wilhelm von Opel after the year 1936 still in existence?

"A. Yes.

"Q. And where are they?

"A. Partly in Ruesselsheim and partly in Wiesbaden.

"Q. Will you make an effort to bring those books and records after 1936 to the hearing tomorrow?

"A. Yes. Then I will have to go to Ruesselsheim again.

"Mr. Connor: I ask to have marked as Plaintiff's Exhibit No. 46, a folder entitled: Schweizerische Kreditanstalt Zurich from March 1930 to June 1932, (Credit Suisse Zurich) and pages contained therein.

"Q. I will ask the witness to take a look at Plaintiff's Exhibit No. 46 and the pages contained therein. What do the entries on those pages refer to?

"A. They refer to his account with the Credit
170 Suisse. (Schweizerische Kreditanstalt)

"Q. What does the first entry on the first page indicate?

"A. It refers to the transfer of Mr. Wilhelm von Opel to the Credit Suisse.

"Q. What date and in what amount?

"A. 11 March 1930 and the amount is 3,787,990.80 Swiss Francs.

"Q. And can you tell from Plaintiff's Exhibit No. 46 what finally was done with the money represented in that first entry?

"A. The balance has been transferred to the Reichsbank Direktorium Berlin.

"Q. Do you mean substantially the whole amount represented in the first entry, that is, 3,787,990.80 Swiss francs

were finally transferred to the Reichsbank Directorium Berlin?

"A. Yes.

Mr. Gallagher: I now offer Plaintiff's Exhibit 46.

(The folder was received in evidence.)

(Mr. Ingoldsby having returned to the trial table, Mr. Laufer having replaced him on the witness stand, to read the answers, and Mr. Baum now reading the questions from the deposition:)

171 Mr. Baum: I now continue with the cross examination of Edith Esklony, at the middle of page 100:

"Miss Esklony further testified as follows:

"By: Mr. Baum.

"Q. Miss Esklony, up until 1939, I believe you testified you were the assistant secretary of Mr. Wilhelm von Opel, were you not?

"A. Yes.

"Q. And who was Mr. Wilhelm von Opel's principal secretary?

"A. From January 1, 1935 to July 1939 it was Miss Frentzel.

"Q. And were the duties of taking care of Mr. Wilhelm von Opel's business affairs divided between you and Miss Frentzel during that period?

"A. Yes.

"Q. In what way were they divided?

"A. Miss Frentzel took care of Mr. Wilhelm von Opel's correspondence and the most important matters. The bookkeeping duties were also divided between myself and a junior secretary who was also employed by Mr. Wilhelm von Opel.

"Q. What was the name of the junior secretary you just referred to?

"A. Miss Fornoff. That is her maiden name.
172 Her married name is Hummel.

"Q. During what time was she employed by Mr. Wilhelm von Opel?

"A. She was employed as early as Mrs. Dern's employment period until approximately the end of 1941.

"Q. Do you know where Mrs. Hummel lives now?

"A. Yes.

"Q. Can you give us the address?

"A. Pfirschbach near Hoechst in the Odenwald."

Mr. Baum: I will now skip the next questions, and read the question beginning—

"You testified the other day that some of the books of Mr. Wilhelm von Opel were burned, did you not?

"A. Yes.

"Q. At whose orders were the books burned?

"A. At Mr. Wilhelm von Opel's orders."

Mr. Baum: That is all.

(Mr. Laufer having returned to the trial table, and Mr. Ingoldsby now on the witness stand:)

Mr. Gallagher: Page 89—

DEPOSITION OF MARTA VON OPEL

"Marta Von Opel, a witness, was called, and having been first duly sworn was examined and testified as follows:

173 *"Direct Examination*

"By Mr. Connor:

"Q. What is your full name, Mrs. von Opel?

"A. Marta von Opel.

"Q. Do you speak some English?

"A. Yes, very little.

"Q. And you are the wife of Wilhelm von Opel?

"A. Yes.

"Q. And you are the mother of Fritz von Opel?

"A. Yes.

"Q. And how old are you, Mrs. von Opel?

"A. Seventy-two.

"Q. What was your birth date?

"A. 25 August 1874.

"Q. And do you live with your husband at Wiesbaden?

"A. At Ruesselsheim before.

"Q. And you now live at Wiesbaden?

"A. Yes, since 1929.

"Q. Do you remember what year the family sold out substantially all of its interest to General Motors?

"A. I think it was at the end of 1929.

"Q. Are you and your husband under a community property system of ownership?

"A. Yes, ever since our marriage.

"Q. But is it not correct that about two years ago you changed that arrangement of community property ownership?

"A. Because of my husband's Party membership our entire fortune was blocked. That was the reason for the change.

"Q. Now after the general sale of the Opel Company to General Motors in 1929, did you and your husband retain 600 shares of Adam Opel, A.G.?

"A. As much as I know he and his brother Fritz retained some.

"Q. Of course, what your husband retained, you owned half of under the community property system, didn't you?

"A. Yes.

"Q. Do you read English, Mrs. von Opel?

"A. Yes.

"Q. Now this purports to be a copy of the gift agreement. Do you remember signing a paper which was the same as this paper, Plaintiff's Exhibit No. 5?

"A. Yes.

"Q. Do you remember the date that you signed that, Mrs. von Opel?

"A. I couldn't know it by heart, it is too long ago.

"Q. But you remember signing the original of that?

"A. Yes.

"Q. Do you remember whether you signed it at Ruesselsheim or at Wiesbaden?

"A. I think at Wiesbaden.

"Q. And do you know Wronker-Flatow?

"A. I know him, of course.

"Q. And did he and his wife visit at your home in Wiesbaden?

"A. Yes.

"Q. And you knew him back in 1931?

"A. Or earlier. I don't recall. He is a General Motors man. I knew him since he was in Ruesselsheim.

"Q. And do you remember at this time whether Mr. Wronker-Flatow was there when you signed the gift agreement, Plaintiff's Exhibit No. 5?

"A. I can't remember, but my husband and my son were there.

"Q. Did they sign at the same time you did or had they signed already?

"A. I think they signed it already and came back from Ruesselsheim and told me about it at Wiesbaden.

"Q. And then you signed it at Wiesbaden as nearly as you remember.

"A. Yes.

"Q. Now, in that gift agreement, Plaintiff's Exhibit No. 5, some mention is made of a 'Niessbrauch'. Did you see that as you read it?

176 "A. Yes.

"Q. Now in that connection, I will ask you whether or not you ever received any income from the gift you made to Fritz?

"A. No, never. We received little presents, a wrist watch and one time my son Fritz arranged for a stag to be shot. Once in 1939 when we were in South America, Fritz gave us a certain amount in foreign exchange to help us for that trip. My husband tried to combine a business trip with a pleasure trip and we met the Opel agents in South America.

"Q. But you, yourself, never received any income from the gift?

"A. Never, never.

"Q. And to your knowledge, did your husband ever receive any income from this property which he gave to Fritz as a gift?

"A. No.

"Q. After you and your husband made this gift to your son, Fritz, did you have any left for yourself?

"A. More than we wanted. We never did want very much money."

(Mr. Laufer now on the witness stand, to read the answers in the deposition:)

Mr. Baum: Cross examination of Marta von Opel,
177 beginning on page 99—

"Mrs. von Opel, after 1929 your son Fritz no longer had a residence in Germany, did he?

"A. My husband sent him to the United States and he was in Belgium for a time on behalf of General Motors.

"Q. And did he live in Switzerland for several years?

"A. Only for several months. He has a villa there. He was sometimes in Berlin and Westerland.

"Note: Westerland identified as a little island off Germany in the Atlantic Ocean.

"Q. After the year 1931, about how often did you see your son Fritz each year?

"A. After 1931 we did not see Fritz every year.

"Q. Between 1931 and 1939 did you see him on a number of occasions?

"A. Yes. Several times in his home in St. Moritz and he came here several times from Berlin."

Mr. Baum: That is all.

* * * * *

191 DEPOSITION OF MANFRED STANSFIELD
(WRONKER-FLATOW)

Mr. Gallagher: I now offer the deposition of Manfred Stansfield.

(The deposition follows, Mr. Gallagher reading the questions, and Mr. Ingoldsby, on the witness stand, reading the answers:)

"Manfred Stansfield was called on behalf of the Defendant, and, after having been first duly sworn by the Notary, was examined and testified as follows:

192 "Mr. Baum: This deposition is taken pursuant to notice dated March 12, 1948 and filed with the District Court for the District of Columbia on the 17th day of March, 1948.

"In addition to the appearances noted on the title page, there is also present Dr. Heinrich Kronstein, Professor of Law, Georgetown University, who is acting in capacity of interpreter in behalf of the Plaintiff. There is present Mr. Joseph Laufer, attorney for the Department of Justice acting as interpreter in behalf of the Defendant.

"It is mutually stipulated between the parties that these two persons are qualified to, and shall act as interpreters without taking oath.

"*Direct Examination*

"By Mr. Laufer:

"Q. Mr. Stansfield, what is your full name?

"A. Manfred Stansfield. I changed my name from Manfred Wronker-Flatow.

"Q. You used the name Manfred Wronker-Flatow until what time?

"A. Until I was naturalized. With my naturalization I dropped the second part of my name and took the name of my mother.

"Q. What is your present occupation?

"A. I am an officer and director of a corporation.

"Q. Where do you reside?

"A. 49 West 57th New York.

193 "Q. Prior to your coming to the United States, where did you reside?

"A. Partly in England and for about 40 years in Germany, a little over 40 years.

"Q. Will you state briefly your education?

"A. Well, I was born in England. Up to the age of six, I had education in England, whatever you have, and then I went to Germany and went to the Humanistic Gymnasium, passed my mature there. I studied at Munich, Geneva, and Berlin, plus my legal examination as a lawyer.

"Q. When were you admitted to the bar?

"A. In 1920; to the Court in 1911. After the war, I was admitted to the bar.

"Q. Where were you admitted to the bar?

"A. In Berlin, later on in Wiesbaden, when I moved there.

"Q. After your admission to the bar in Berlin in 1921, where did you reside?

"A. In Berlin.

"Q. Until what time?

"A. Until 1930. In 1930, I moved to Wiesbaden.

"Q. How long did you live in Wiesbaden?

"A. Until the end of 1932. Then I moved to Ruesselsheim.

"Q. And you remained in Ruesselsheim how long?

"A. Until November, 1933, November 24, 1933.

"Q. And then you left Germany?

194 "A. I left Germany, yes.

"Q. And you came to the United States?

"A. Not right straight away. I first went to Switzerland and looked over the General Motors organization for General Motors in Europe.

"Q. And then you came to the United States?

"A. Well, I came to the United States quite often before I settled down, and that was in May, 1939. It may be June —no, I think it was the end of May, 1939.

"Q. After you left Berlin, did you continue to practice law in Germany, that is, in Wiesbaden and subsequently in Ruesselsheim?

"A. I did not practice law. I was a member of the Vorstand when I came to Ruessellsheim, member of the Vorstand of the Adam Opel A. G. I was a member of the board of supervision, I think you would call it, and, as such, I was also general counsel of Adam Opel A.G.

"Q. In addition to your training in German law, did you have any training in American or English law?

"A. The training I had was by studying personally, yes, and I was with Justizrat Schneider as Referendar before the war, who was the expert on American and English law. So, I had a practical education in American and English law. But, I would not, by any means, call myself competent in American law or English law. For the purposes it served, it was all right.

195 "Q. Were you ever a Notary in Germany?

"A. No. I never applied for it. I was all the time traveling practically. My practice was international and I traveled all over Europe and was very often in the United States and Canada.

"Q. You are now a citizen of the United States?

"A. That is right.

"Q. When did you meet Wilhelm Von Opel?

"A. 1928.

"Q. When did you meet Mr. Fritz Opel?

"A. It was also in 1928.

"Q. On what occasion did you meet these gentlemen?

"A. In 1928, there were negotiations between General Motors and the Opel Brothers regarding the sale of the Opel Plant or the Opel firm. At that time, the firm was not a corporation. In fact, I was rather instrumental in insisting on changing it to a corporation before we took it over.

"Q. You were retained by General Motors Corporation at that time, or had you been retained before?

"A. I was retained before.

"Q. Since when?

"A. Ever since General Motors came over to Germany, I acted for them for all of their activities. They had an Acceptance Corporation. I acted for Frigidaire and for the insurance company.

196 "Q. When was that, approximately?

"A. I would say it started in 1926 or 1925, something like that.

"Q. In dealing with Adam Opel A. G., were you acting on behalf of the General Motors Corporation?

"A. Are you talking now about the beginning? During then, they were the Opel Brothers, you see.

"Q. Were you ever retained by the Adam Opel, A. G., prior to the sale to General Motors?

"A. Not prior to the sale to General Motors, no.

"Q. But subsequently?

"A. Subsequently I went with General Motors, first on the board, as I stated. I was counsel of the Adam Opel A. G. I went in the board of managers.

"Q. That was when?

"A. 1930 that I went on the board of management.

"Q. Were you retained personally by Wilhelm Von Opel at any time?

"A. No.

"Q. At no time?

"A. At first there was strong opposition on the part of the Opel Brothers against American methods. They had built up their firm through a lifetime. They felt everything they had done was wonderful. I had to amalgamate that with American ideas. I had a lot of fights with the Opel Brothers to start with. As they saw that I tried
197 to be fair in every case, I developed very nice friendships with both. I understand the Opel Brothers formerly also had terrible fights and they also remained brothers in spite of that. It developed into a very friendly relation and Wilhelm Von Opel treated me, after a very short while, as a very good friend, and all of his internal matters, most personal matters, he discussed with me. I should not say all, because I know only of these he did discuss with me.

"Q. But you were never formally retained by him as his attorney?

"A. No.

"Q. Were you ever retained by Mr. Fritz Von Opel?

"A. No.

"Q. In your capacity as general counsel of Adam Opel A. F. in Ruesselsheim, you had, of course, contact with all of the officers of the General Motors Corporation in the United States, did you not?

"A. Well, with all of those that had anything to do with it, and most of them I knew very well, but I knew them before as counsel of General Motors.

"Q. In your official capacity as counsel of General Motors, with whom did you deal in the General Motors organization here?

"A. On the legal level it was John Thomas Smith,
198 and Charley Carroll was in the Export. That is on the legal level. Otherwise, there were many. J. P.

Mooney was the president of the Export Corporation at that time. There were Graeme Howard and Ed Riley. There were numbers.

"Q. You knew Mr. Pratt?

"A. Oh, yes, I knew Mr. Pratt.

"Q. And Mr. Sloan?

"A. Very well.

"Q. Mr. Brown?

"A. I had very little to do with Mr. Brown. I met him in John Thomas Smith's office.

"Q. And Mr. Bradley?

"A. I knew him very well; also the Fisher Brothers, Fred Fisher and Charley Fisher.

"Q. You mentioned before that negotiations between the General Motors Corporation and Adam Opel A. G. and Opel Brothers were carried on in 1928. What was the final result of these negotiations?

"A. Well, the first final result was an option for General Motors either to buy the plant of the Adam Opel A. G. and all the assets of the Adam Opel firm, to buy the stock if the Opel Brothers in the meantime converted their firm into a corporation. It was an option with the right for General Motors to investigate. Investigations took place. I would say that in March, 1929 the option was accepted and
199 payments were made, and escrow agreements were made and so forth.

"Q. What escrow agreements are you referring to?

"A. There was an escrow agreement—now, I have not seen those for many, many years, and I do not quite remember whether they were separate escrow agreements for Fritz Von Opel and Wilhelm Von Opel.

"Q. When you speak of Fritz Von Opel, do you mean the Brother of Wilhelm?

"A. That is right.

"Q. I am showing you now Plaintiff's Exhibit No. 3; and I ask you whether this is one of the escrow documents you

were referring to? This is a letter dated April 11, 1929, and addressed to the National City Bank by Mr. Wilhelm Von Opel.

"A. Do you mind if I read it to refresh my memory?

"Q. Read it by all means.

"A. I mean I remember it, but not the details. It would have been the end of March or early in April, I would say.

"Mr. Laufer: At a previous deposition, it was stipulated between the parties that the date of Plaintiff's Exhibit No. 3 is April, 11, 1929.

"Mr. Connor: That is at page 9 of the depositions heretofore taken.

"The Witness: This looks as if there were two escrow agreements. This would only be ten percent.

200 "By Mr. Laufer:

"Q. Could you tell us what the purpose of this escrow agreement was?

"A. There were many purposes. In fact, on both sides, there were different reasons for being quite satisfied in having this escrow agreement. In the first place, it was felt that it would be well to keep some German ownership, at least, at the beginning. When we had all the publicity, there was quite an uproar when the biggest automobile plant in Germany was sold to American control, and this enabled us to say that we felt there was at least as much capital still in the Opel firm as there was in most of the other German automobile plants.

"Now, I have to recollect a little bit. I know there were many considerations on both sides. There was quite some discussion about the question. When we started out, we were talking of 100 percent. While giving it a lot of thought on both sides, we could see some very good reasons why it should be traded this way. On General Motors' side, also

they wanted to keep the interest of the Opel Brothers. We knew that there would be quite some feelings because General Motors was going to scrap a great deal of the work that Fritz Opel had done; that is, the old Fritz Opel, on the engineering end; and they had a terrific program of cars ranging from the smallest four cylinder car up to the eight cylinder car, compared at that time with the Cadillac. We felt in the beginning we were going to reduce the
201 program, beginning only with the one small model and later on to a small six cylinder model, and that was almost over the dead body of Fritz Opel. He did not say that in so many words. We had all of these fights afterwards with him. We felt we wanted to keep him interested and have an interest in the development and not to break up. We felt that was one of the ways how to do it. That is the second reason.

"The first reason was very important for the General Motors.

"For the Opel Brothers, it was naturally also interesting to have some of the money outside of Germany. At any time it was interesting to have dollars or get dollars or be able to convert to dollars. I think that was interesting to the Opel Brothers to get it at a later date.

"I cannot say that I discussed this particular point before this was made, but maybe I mentioned it to the Opel Brothers that it would probably be advantageous.

"Q. So, what was the actual, final transaction that was made in 1929?

"A. Before the option was accepted, the firm had been changed into a corporation. Now, at that time, my firm was already acting also for the Opel Brothers. It was a rather peculiar situation. With the permission of General Motors, we acted then for both parties practically. It is understandable why they would have my firm act in the change to a corporation, because they wanted to know that
202 the corporation, as set up, would be satisfactory to General Motors. When the transaction was made,

the corporation was in existence, then the stock was purchased.

"Q. How much of the stock was purchased?

"A. Eighty percent, and 20 percent went into escrow.

"Q. Ten percent of this stock was referred to in this escrow agreement; is that right?

"A. Yes, I think that is the ten percent; ten percent of the 100 percent, that is right.

"Q. And the remaining ten percent?

"A. As far as I remember, in the name of Fritz Opel.

"Q. And these remaining ten percents were covered by a similar escrow agreement?

"A. That is correct.

"Q. Now, you say there were very good reasons on both sides why a German interest should be retained; is that correct?

"A. That is correct.

"Q. Would it not have been just as well served by having the Opel family own outright, retain outright, ownership in this 20 percent instead of subjecting them to this escrow agreement?

"A. General Motors wanted to be in the position at any time, when they wanted to, to make the 100 percent
203 purchase. Of course, that is the way they started out; that was their original intention.

"Q. This agreement also provided that Wilhelm Von Opel or Fritz Opel could, in turn, request General Motors to take the stock off their hands?

"A. That is correct; but at a certain damage.

"Q. In what respect was there a certain damage?

"A. As far as I remember, the price was higher if General Motors asked and lower if the Opel Brothers asked. So, if they waited until General Motors asked, they would have gotten a higher price.

"Q. Was one of the considerations involved in having the German interest retained, problems of German taxation?

"A. On whose side?

"Q. On the side of either one, General Motors on the one hand or the Opel Brothers on the other.

"A. As far as General Motors was concerned, we set up a situation where the transfer would not be 100 percent in the name of the General Motors Corporation. Part of the stock went to the Argonaut Realty Corporation, five percent of the stock, if my memory is correct. That was set up with the idea if at any time the stock of the Opel Brothers, if they insisted on taking over, still General Motors would not own 100 percent of the stock. That was done because otherwise it would involve a real high real estate
204 tax. That tax was not meant really to hit cases like this, but it would have hit them. For that reason we protected it by having five percent to the Argonaut Realty Corporation.

"Q. On the part of the brothers, Wilhelm Von Opel and Dr. Fritz Opel?

"A. As far as tax was concerned?

"Q. Yes.

"A. Well, they did not discuss their tax problems at that time with me. They did later on, but not then.

"Q. Mr. Stansfield, I would like to ask you if you are familiar with the so-called gift agreement which was entered into between Wilhelm Von Opel and his son?

"A. Very definitely yes. I have not seen it for quite some time. So, I do not remember the exact wording of every one of them.

"Q. I would like to show you a copy of that agreement and ask you whether that is the one you refer to, Plaintiff's Exhibit No. 5?

"Mr. Connor: Mr. Laufer, since Plaintiff's Exhibit No. 5 was put into the record at the depositions taken in Germany I understand that you procured from Wilhelm Von Opel, a copy of a document purporting to be the original of the gift agreement, and that the document which you

have just handed to me is a photostatic copy of that purported original gift agreement. I think it would be
205 well for the record if this were now marked Plaintiff's Exhibit 5-B, and that in the further discussion of the gift agreement, we might preferably refer to Plaintiff's Exhibit 5-B for identification in connection with the discussions of the gift agreement.

"Is that agreeable?

"Mr. Laufer: Yes.

"Mr. Connor: Let the record show that there has been handed to the witness a photostatic copy of Plaintiff's Exhibit 5-B for identification.

"The Witness: That is the gift agreement, yes.

"By Mr. Laufer:

"Q. Were you present, Mr. Stansfield, when this agreement was signed?

"A. I am sure I was present when it was signed by Wilhelm Von Opel and Fritz Von Opel. I am not sure whether I was present when Marta Von Opel signed it. I lived at Wiesbaden at the same time Wilhelm Von Opel lived there. I know for certain it was signed. I remember that very definitely.

"Q. You say you remember definitely it was signed by Wilhelm?

"A. By both. I was present when it was signed.

"Q. Do you know when that agreement was signed?

"A. I do not remember the date, but I feel sure that the date on here was the date when it was signed, because
206 I did not usually make agreements and have them ante-dated.

"Q. So, you state that you are sure that this agreement was not pre-dated?

"A. I feel absolutely sure, because I did not do that. When I was present and contracts were made, we did not ante-date them. It was not a practice.

"Q. Did you state to an official of the FBI that you recalled vaguely some discussion about pre-dating this agreement?

"A. Definitely not.

"Q. You never said that to the FBI agent?

"A. Definitely not.

"Q. Did you tell him that it was entirely possible that the agreement may have been pre-dated?

"A. I do not think I ever would have made such a statement.

"Q. You mean to say that you did not make such a statement to the FBI agent?

"A. Yes. About a half a dozen FBI agents—I do not know how many—have asked me the same question. I do not remember every question and every answer, but I feel pretty sure that I would not have said to him that it might be well possible that it was ante-dated. I would not expect to give such an answer.

"Q. Do you recall who typed the agreement?

207 "A. Well, I recall who could have typed it, and who was in the office of Geheimrat Von Opel, because it was in the office of Geheimrat Von Opel, and his chief secretary was Miss Uebel. I know somebody typed it and I know it was brought in and signed.

"Q. When you drafted this agreement of October 5, 1931, did you prepare an original draft, or did you have any preliminary drafts to work on?

"A. It would be my guess that there was a draft, very lengthy draft, of Max Hachenburg. I have the highest respect for Max Hachenburg, as a lawyer, but I did not think this quite met the situation we had there.

"Q. I an showing you now a document marked Plaintiff's Exhibit No. 8, and I ask you whether this is the draft of Dr. Max Hachenburg that you were referring to?

"A. It looks like it. I mean I do not remember every detail of it, but it looks like Dr. Hachenburg's.

"Q. Who was Dr. Hachenburg?

"A. One of the outstanding German corporation lawyers.

"Q. Did you know him personally?

"A. Yes; we worked together. He represented the Opel Brothers at our first meeeting with General Motors on the purchase of the stock or the Opel plant. He had at that time, also made some draft of agreements which we did not accept, but we made very much simpler agreements
208 that I drafted at the same time in English and in German.

"Mr. Connor: You are now referring to agreements with respect to the sale to General Motors?.

"The Witness: That is correct; in connection with Dr. Hachenburg.

"We were very close together for days. I met him outside as a lawyer.

"By Mr. Laufer:

"Q. Did you confer with him also on the drafting of this document of October 5, 1931, the Agreement?

"A. I do not remember that I did, and I do not think I would have.

"Q. But you saw this preliminary draft that he had drawn up?

"A. That I remember.

"Q. Did you see any other documents that he had addressed to Wilhelm Von Opel or Fritz Von Opel about this very same agreement?

"A. It could be, but I do not remember.

"Q. I am showing you now Plaintiff's Exhibit No. 7, copy of a letter dated October 3, 1931, and addressed to Wilhelm Von Opel, and I ask you whether you remember having seen this letter?

"A. It is quite probable that I have seen it. I could not swear to it, but I would say Wilhelm Von Opel would
209 have shown it to me.

"Q. I now show you Plaintiff's Exhibit No. 9, a copy of an outline of the gift agreement, which was contained as an enclosure of the letter of October, 1931, Plaintiff's Exhibit No. 7, and ask you whether you had seen this outline at the time of drafting the October 5, 1931 agreement?

"A. I do not remember this. I do not remember seeing it. If it was part and parcel of the correspondence up to the date when I made this other draft, then I might have seen it.

"Q. I am showing you now Plaintiff's Exhibit No. 10, copy of a letter dated October 5, 1931, written by Dr. Max Hachenburg, and addressed to Mr. Wilhelm Von Opel, and ask you whether you saw this letter at the time when the October 5, 1931 agreement was drafted?

"A. I do not remember that letter.

"Q. When you drafted this agreement with whom did you discuss it?

"A. Well, in the first place, with Wilhelm Von Opel, but Wilhelm Von Opel had discussed with me many times the desire to be able to preserve—he said he was not worried about income, and this went back years before this, say in 1929, after the agreement was made—he was worried about preserving for himself and for his family, or for his family, capital, as much of the capital as he could, and in 1931, starting, I would say, in the early summer of
210 1931, as you know, the financial situation, the economic situation everywhere, was very upsetting, and people were very nervous about what was going to happen next. So, it was the outcome of many talks. It was not that we sat down in 15 minutes and decided this thing. We had discussed the general question behind this before. We had discussed it in many respects.

"The four Opel brothers had between them offspring of eight, six of them had gotten the full share of the Opel plant. One had gotten a good part as endowment when she married. This was the sister of Fritz Von Opel. Fritz Von Opel was the only one who never got anything out of it. In addition, he was the main one who lost by the sale. Before the sale was made, Fritz Von Opel was the man who probably would have taken over the general management of the whole plant. He was the one headed for that. In fact, if I remember correctly, he was made a member of the Vorstand as general director. He was called general director when the corporation was made. In the beginning when General Motors took it over, he and Mr. Wood were the two members of the Vorstand. But, it very soon appeared that it was not a team that could really work together, because the General Motors, I guess, naturally prevailed 100 percent, and the Opel families were not used to listening to instructions from other people. So, it did not quite work out.

"So, the idea was, when the sale was made—Fritz
211 had lost his position, had lost practically his future, as a German industrialist, because the Opel family was not permitted to go in the automobile industry again. That was all the training that Fritz von Opel had. So, the idea of giving Fritz Von Opel a share similar to what the seven others had gotten, and most of them were younger than he was, was in the air. It was developed to this in 1931, when all the excitement about what is going to happen to Germany—are the Communists going to take over or are the Nazi going to take over? That led to the discussions with Wilhelm Von Opel. I do not think that I had many, if any, discussions about it with Fritz Von Opel."

(The reading of the deposition continuing, Mr. Boland now in the witness chair reading the entries.)

"Q. Did you have any discussions with anybody else?

"A. About this particular deal between Wilhelm Von Opel and his son?

"Q. Yes.

"A. I do not recall. I recall that maybe the mother was present sometimes, but otherwise it did not go outside as far as I remember.

"Q. Did you discuss it with Wilhelm Von Opel's daughter?

"A. I don't think so, at least, I definitely do not remember. I do not remember ever talking to her about business matters. I remember talking to her about her family
212 matters, about her husband, but not about capital matters.

"Q. When you drafted this agreement of 1931, did you have the option agreement of 1929 on hand?

"A. I do not know.

"Q. Did you discuss it with Wilhelm Von Opel at that time?

"A. In 1931?

"Q. Yes.

"A. It could be. If I did, I don't remember, and I don't remember in what connection, but it could be. I really do not know the details. It is seventeen years back.

"Q. Do you recall whether you discussed that option agreement with Fritz Von Opel, the asserted donee?

"A. When you say the option agreement, do you mean the escrow?

"Q. Yes.

"A. Wait a minute. Whether I discussed the escrow agreement—I am quite sure we did, because it was so closely connected. We were not talking about the same agreement.

"Q. I was talking about the escrow agreement of 1929. I will repeat the question. Did you discuss the escrow agreement with Wilhelm Von Opel at the time when you finally drew up this agreement of October 5, 1931? I am referring now to Plaintiff's Exhibit No. 3.

"A. It would be naturally that it would have been
213 mentioned. We knew the contents of it. There was not much we could discuss about it. It was a simple agreement. We knew what the contents were. It was part of the atmosphere.

"Q. You also mentioned or discussed this escrow agreement of 1929, Plaintiff's Exhibit No. 3, with Mr. Fritz Von Opel?

"A. I do not remember. Also there it is very well possible; it is almost probable, when we were in together in connection with this agreement, because of the way it developed—I would say we took that escrow agreement for granted to start with. It was part of the whole gift.

"Q. You testified before that this draft by Mr. Hachenburg was not acceptable and required modification; is that correct?

"A. Under the circumstances, yes, that is correct.

"Q. Would you explain to us why the original draft was not acceptable or required modification?

"A. Well, to understand this whole situation you have to put yourself into the atmosphere of October 1931 in Germany, which was similar to the atmosphere here now today, or anywhere, when you start discussing whether there is going to be a war or not, or is this part of the country going to turn Communistic or is not—many things we know today we did not know seventeen years back. We did not know at that date whether we had a lot of time to
214 go through a very complete set of how this should be handled in planning your future, in a very careful way for the son and so on, or whether you had only 24 hours to do it, you see, because emergency decrees were coming out one after another. I do not remember any more the dates when they came out, I know at that time there was a hectic situation.

"Q. What emergency decrees are you referring to?

"A. I am not referring to any detail. There were very many and the current economic situation was almost growing out of hand.

"Q. Are you now speaking about the emergency decrees by the Bruening Government or any specific emergency orders that might have a bearing on Mr. Von Opel's specific situation?

"A. At that moment, there were no emergency decrees that prevented doing what we did with the gift agreement, but we did not know whether within 24 hours there wouldn't be something to that effect, or in three days or in three months. Before the things happen, you do not know what date they are going to happen.

"Q. Are you referring now to decrees governing foreign funds control in Germany?

"A. Anything could interfere with Geheimrat Von Opel making the gift to his son effectively and disposing of stock that he had outside of Germany.

215 "Q. Such decrees would be decrees governing currency and foreign funds; is that not correct?

"A. Don't let me tie myself down to anything. It was a big cloud. We did not know what it might be, what things that would interfere with doing what was the intention to do.

"Q. Do you recall that on October 2nd, the German Government issued an additional emergency decree relating to foreign funds control which strengthened the extent of government control over foreign funds?

"A. I do not remember that it was done on the 2nd of October. Even if the date was October 2nd, it does not mean you knew it on the 2nd of October. It could have been a few days later.

"Q. Or a few days earlier?

"A. That you knew about it, before the 2nd day of October?

"Q. Yes.

"A. I do not remember. I do not remember any one of the dates. I have not gone over those things. I must say I only got my books after fifteen years, just about a month ago. So, I was out of contact with those things and they did not mean anything more to me, the date. What I was concerned with at that time was whether, when we made the agreement, we could do it, whether it was legally possible. I was under the impression, and I suppose everybody else would have been, that it was necessary to act
216 very quickly and very smoothly, to make it effective.

"Q. So, the whole transaction was carried through with some degree of urgency and haste?

"A. It was almost hectic. I mean at that time the Nazi had gotten into power. In every election, they got more votes. Some people thought, in spite of that, that we might go Communistic, but other people thought they might go National Socialistic, but few people knew what the difference was, but they knew it would not be good for the capitalists.

"Q. I am returning to my question: Why was the draft by Mr. Hachenburg abandoned? You said, did you not, that there were too many details in this agreement?

"A. Yes.

"I will give you a little bit more background. I had a lot of experience in Peace Treaty settlements after the last war, and I knew how important it was that transactions were made on certain dates and that they were made so that they would stand up under the scrutiny of examination and cross examination. So, I knew that the important thing was to get this gift settled in a way that somebody outside of Germany was the one who owned it, that it would not be subject to German legislation any more; that no pressure could be brought about handling this, and for that reason, a lot of things were done that when you look at it as a lawyer, who is used to taking things
217 very peacefully and has a lot of time to think things over, you might do them a little bit differently, but

I knew that the main thing was to get it out of German legislation if we wanted to make this gift effective, and so that it stayed outside.

"I must say one thing, how capitalists felt in those days. There was a fear. Some feared Communism and some feared National Socialism, but they all feared something. There was a saying at that time that money alone does not make you happy. In Germany it was said, 'Geld allein macht nicht glücklich, man muss es in der Schweiz haben.'

"That is, money alone shouldn't make you happy; you should have it in Switzerland to be happy about it. That meant you had to have it outside of Germany.

"There was also a good reason why this transaction should take place outside of Germany just as fast as possible, and for that reason we did some of the things you would not do otherwise in your dealing with a stranger and not between a father and a son.

"Q. Do you know whether, at the time of this agreement, there was some form of understanding between Wilhelm Von Opel and Fritz Opel as to how the shares that were the object of the gift were to be handled?

"A. I can tell you my own opinion and my own recollection about this situation. I felt the right thing
218 would be for Fritz Von Opel to sell the Opel stock just as fast as he could, and for this reason: I did not want to have it in escrow there and have a situation where pressure could also be brought upon General Motors. I was interested in General Motors getting out of the whole situation. If it was known that there was an escrow agreement and that General Motors were the people who could decide—we said there was so much capital in German hands. We did not say whether it would stay in German hands or not; we never mentioned that. But, in case there were regulations that would force the Opel brothers to bring their money in or something like that, General Motors would have been under the same pressure. They would have been forced, not by law maybe, but

by pressure that could be exerted on the various corporations, and I know how General Motors would have acted if they had been told by the Government. They would have said, 'Well, we will wait until all this is clear and clarified and so on.' For that reason, it was my opinion that if the gift was to be made effective in every respect—that is, being subject to German laws—it should get out of the escrow of General Motors—that was the main thing that I felt should happen.

"Q. And you communicated this opinion of yours to your friend, Mr. Wilhelm Von Opel, and to Mr. Fritz Von Opel at that time?

"A. I am sure I expressed it. I do not know
219 whether they were so clear about this, but I made it very clear that I would act quickly and would do that. I have given a lot of advice that was never followed, not only in this respect. I did not keep a diary of everything I said. I must say that too.

"Q. The draft of Mr. Hachenburg's contained rather detailed references to a holding company?

"A. Yes.

"Q. Do you know whether or not there was an understanding between Wilhelm Von Opel and Dr. Fritz Von Opel to have these shares transferred to a holding company?

"A. I do not remember that at all. Let me put it this way: I felt that the only thing that was urgent was to get it out of the General Motors and have it under the control of Fritz alone, and nobody else had to decide what should happen to the proceeds of these shares but Fritz Von Opel outside of Germany. That was my personal opinion in the whole thing. I felt that everything else could be handled afterwards. That was not urgent. I am sure I said, 'I do not want to burden the situation at this moment,' because what he was given was practically part of his inheritance, in any case, and so on.

"Q. Do you recall whether or not it was clear between Mr. Wilhelm Von Opel or whether it was made clear as between Wilhelm Von Opel and Fritz Von Opel during this drafting period, that the Opel shares or their
220 proceeds should be transferred to a holding company?

"A. Well, there is no question that some talk must have been about that subject, on account of the Hachenburg letter and draft. I mean that would have brought up the question. I am sure that I just brushed that aside because I did not feel that was a thing that was important at this moment.

"Q. I am not so much concerned about your personal opinion at that point, but as to your observation as to the relations between Wilhelm Von Opel and Fritz Von Opel with regard to this matter.

"A. Well, I have tried to think of it. I don't remember from that time. I have heard it afterwards. I do not remember at that time whether we went into any detail about any holding company or anything. I was in the management of a concern that was very busy and I was asked to sit in and help straighten this situation out. That could all be done quickly because we had discussed the problems that we were trying to solve very often before.

"Q. I now show you a transcript of record in the case of Uebersee Finanz-Korporation Aktien Gesellschaft versus Rosen and others in the United States Circuit Court of Appeals, and refer you to page 30 of that record, where there is an affidavit by Manfred Wronker-Flatow, dated June 6, 1935, and call your attention to a statement appearing on page 31, and ask you whether this refreshes your memory.

221 "Mr. Connor: May I suggest the witness read the whole affidavit?

"The Witness: 'In September and October, 1931, I advised Dr. Wilhelm von Opel and his son Fritz von Opel in the preparation and execution of a deed of gift from the former.

to the latter, of which a copy is attached to the affidavit of Mr. Fritz von Opel herein marked Exhibit R. I participated in the conversations which led up to the execution of these documents. In these conversations, it was stated by Dr. Wilhelm von Opel and Mr. Fritz von Opel that the securities should be transferred to a corporation for the purpose of protecting the interests therein created by the deed of gift. The clauses in the deed of gift relative to the usufruct reserved to the parents of Fritz von Opel were particularly insisted on by Dr. Wilhelm von Opel, who said that he attached the greatest importance to this restriction on and reservation from the gift. As drawn by me the deed of gift, Exhibit R, was drawn for the purpose of carrying out the intention of the parties so expressed.'

"Is that what you wanted me to read?

"By Mr. Laufer:

"Q. Yes.

"A. This was in 1935 and this is 1948, and probably what I said at that time was fresher in my mind. At this moment, I do not recollect.

"Q. Do you remember having made this affidavit to
222 an American court in 1935?

"A. I remember having made an affidavit at that time, and I suppose it is that.

"Q. Will you have a look at the entire affidavit and see if you can identify it as your own?

"A. Well, I made an affidavit to that effect. I suppose it is verbally what I said. That, I cannot swear to without seeing my own draft. I do not remember every detail of it.

"Mr. Laufer: I will have marked as Defendant's Exhibit D-34 the affidavit of Manfred Wronker-Flatow, dated June 6, 1935, appearing on pages 31 to 35 of the transcript of the record in the United States Circuit Court of Appeals for the Second Circuit in the case of Uebersee Finanz Korporation Aktien Gesellschaft versus Walter T. Rosen et al.

"By Mr. Laufer:

"Q. Coming back to this drafting period on or about October 5, 1931, did you know at the time that Fritz von Opel held an option on certain shares of a Swiss corporation called Uebersee Finanz-Körporation?

"A. I do not recall hearing that name until long after that.

"Q. Did you know that he held options on shares in some Swiss corporation at that time?

"A. I do not remember that I did.

"Q. You stated before that about that time when
223 the gift agreement was signed, the sale of these shares had been practically decided upon; is that correct?

"A. I know that I personally was strongly in favor of selling them.

"Q. Well, I am interested in the intentions of the parties.

"A. I flattered myself that they were following my advice. Whether they were going to or not, I do not know. I prepared everything so they could do it, and could do it smoothly and without any noise.

"Q. I show you again a copy of the alleged gift agreement of October 5, 1931, and marked Plaintiff's Exhibit 5-B, and call your attention to the second sentence in the first complete paragraph of this agreement which reads in English that the agreement was made, 'In order to preserve the property in the male line of descent' of the Opel family, and I would like to ask you to explain the meaning and purpose of that statement?

"A. Well, you see, this agreement was in an unorthodox way for this reason: Properly, the agreement should have been made before a notary public and under the ordinary circumstances, that is what we would have done. A notary public, under German law, is something entirely different from a notary public over here. I wonder whether I have to go into detail there?

224 "Q. If you will state briefly the difference.

"A. Well, the difference here, I believe, anybody

who can write their name and a few other things can apply to become a notary public, and he has to be able to answer some questions that he knows before he goes to answer them. Over there, you have to be a lawyer of old standing. In some states over there, you could only be a notary public, but you had to be a fully qualified lawyer, with qualifications to become a learned judge, in any case, in any state, you have to have that qualification, as far as I remember.

"Now, in those states that I really know, as a rule, they were lawyers of old standing that became notary publics. When a notary public took up a notarial act, he kept the originals in his own notarial file, and all he handed over to the parties was a copy, a certified copy of the original. If the notary died, for instance, the originals would go to the court, and the court would keep them, and God knows how many years later, you could always get a certified copy of that original, and it was as good as the original in any place under the law. The notary public files were always open to inspection at any time because he had to take care of the payment of stamp duty taxes.

"Q. Inspection by whom?

"A. As far as I remember, by the tax control, to see that the taxes were properly taken care of. In many
225 cases, the notary did not have the right to hand over certified copies before those taxes were paid.

"So, we had a good many reasons why, at that time, we did not want to run into danger of having any publicity of a big gift being made, a gift of this extent being made. We did not want it to leak out until the gift was effective and was really made valid. It was my idea at that time that the quickest way to act was that way without any publicity and have Fritz Opel take care of the whole situation.

"Q. I should like now to revert to my question, why the statement was made in the first paragraph of this gift, 'In order to preserve the property in the male line of descent'?

"Now, although we did not want this document to become public property before we really had obtained the purpose of this document, that is, to get this part of the Opel fortune into hands that would not be subject to the German laws any more—before we had achieved that, we did not want it to become public property. After that, we knew we had to present it, and we had to state that gift was made and gift tax had to be paid. So, for that reason, knowing the sentiment of the Germans, we did not have to tell them and we did not want to tell them—in fact, the transaction that was being made was parting with the Opel's stock to an extent.

So, I can assure you, we made many documents that
226 way, that were made for the Nazi people to read them and be happy about them when they read them. This read all right for a Nazi, to see that the father who was subject to Nazi pressure, wanted the son to keep this in the family.

"Q. At that time, in 1931, what Government was in power?

"A. The Bruening Government.

"Q. When you speak of Nazi pressure, you are referring to some indefinite future?

"A. Yes.

"Q. You just stated that you wished to keep the situation under your control until the shares were sold; is that correct?

"A. Yes; until they could not touch it.

"Q. You said before, you avoided a notarial act in order to preserve the secrecy of this transaction?

"A. That was one of the things. I do not know whether I said secrecy or not; keep it in the family.

"Q. You said you wanted to keep it in the family?

"A. All right.

"Q. In making a notarial act, the only access to these notarial files would be had by the Government; is that correct?

"A. Right; and the tax authorities; and whatever that meant already then, and whatever it meant in the future, we found out later on to the fullest extent, but we had some idea what it could mean.

"Q. So, you wished to keep the agreement a family
227 secret, at least until you had sold the shares; is that correct?

"A. The same as we did with the whole Opel transaction in 1928 and 1929. No publicity came out of the Opel transaction until it was finalized. For six months, nobody knew anything about it, about the way we handled it.

"Q. But the 1929 transactions were formalized and finalized before a notary public; is that right?

"A. Not at the beginning. At the beginning, two of the agreements were signed in Paris and one of the managing directors—in fact, the managing director of the General Motors GMBH—had typed the English agreement, and my wife, who was a very poor typist, who never did it for any business purposes, typed the German agreement and Hachenburg dictated while I wrote the German part and English part. We kept the secret there too as long as necessary.

"Q. This agreement of October 5 was never formally notarized afterwards?

"A. It was not necessary, because you could legalize the gift just by performance.

"Q. When was the gift perfected under German law after the signing of this agreement?

"A. When the transfer of the donated object was actually made. I hope 'transfer' is the proper word in American legal law.

"Q. When was the gift then perfected?
228 "A. At that date it was perfected.

"Q. At that date it was perfected?

"A. Yes.

"Q. You stated before that you wished to wait. You did not mean to say you wished to wait until the perfection of

the gift, because the agreement, itself, constituted, according to what you say now, the perfection of the gift?

"Q. Not according to what I said, no. The agreement itself was not notarized and thereby, there was no legal possibility to sue, for instance, under that agreement. If it had been notarized, then the donee could sue the donator."

Mr. Burling: I appreciate the difficulties counsel has in reading. I would respectfully request that he endeavor to read it as much as possible so that the meaning we gave to the sentences can be brought out. I am sure it is through inadvertence that counsel has read through a great many commas.

Mr. Gallagher: You want the commas read?

Mr. Burling: I don't want the commas read.

Mr. Gallagher: The pauses, you mean.

Mr. Burling: I want the sense brought out.

Mr. Gallagher: I am sure we can. I wanted to expedite it.

Where did we leave off?

The Court: You read that part, Mr. Burling.

229 Mr. Burling: May I read it?

The Court: You read it.

(The reading of the deposition continued, Mr. Burling now reading the questions and Mr. Boland the answers):

"Q. At that time, then, was the gift completed?

"A. In fact, when the shares got in the power of Fritz von Opel, or whichever way it was done afterwards—I do not know how they handled it at the final stages. I know what we did so they could handle.

"Q. So, the gift, what is called in American law, an escrow agreement, it was not the transfer itself?

"A. That is correct.

"Q. So the execution of the gift was to take place at some later stage?

"A. Correct.

"Q. And in what form did you visualize the effectuation of the gift?

"A. Well, there were two possibilities. There, again, I want to make it clear, I had this double capacity. I did not want to have General Motors involved in any way in this whole thing, and for that reason, for quick action and not make it necessary for American lawyers to pass on the legality of the gift act and so on, I just made out power of attorney for Fritz von Opel so that he could go over and give instructions to General Motors to get out
230 of the escrow. From then on, as far as I was concerned, they were practically on their own. I had opened the doors of how to do it and how to get it under control. Whether they did it or how they did it, it was up to them. I do not think I followed through on the further steps.

"Q. If Fritz von Opel never took the shares out of escrow but sold them directly to General Motors, when, in your opinion, was the gift executed?

"A. Well, he was acting at that time, as far as the outside was concerned, on behalf of the owner of record. I would say that the moment he put into his own name either the shares or the proceeds, he had the right to act as the owner of the stock, from that moment, because Wilhelm von Opel immediately gave him the power to act. This power was also for several reasons. One of the reasons was my experience with legal foreign documents getting into the hands of American lawyers and the time it takes before they decide that this document is in order and they can transfer millions of dollars to somebody else. I mean they do not do that in a half hour's time.

"Q. You mentioned before that you thought the gift was completed at a time—

"A. When the transfer was actually made.

"Q. When the transfer was actually made to Fritz von Opel's own name?

231 "A. To Fritz von Opel.

"Q. To Fritz von Opel as the attorney in fact, of Wilhelm von Opel?

"A. Wait a minute. You talk about the shares. Internally, it was the understanding that he was the owner at that moment. Externally, there was no intention—in fact, it was the intention not to make that clear, because the proxy was not in order. It was, to an extent, taking the place of a complete notarial act.

"I do not want to decide at this moment, without thinking it over very carefully, at what moment this gift agreement became effective by performance.

"Q. What sort of shares were these automobile shares?

"A. Usually they were bearer shares, so I suppose they were bearer shares. I mean German shares, as you probably know. They were in escrow under the name of Wilhelm von Opel.

"Q. Coming back to the gift agreement of 1931, do you remember that it contained certain provisions about Niessbrauch? Whose idea was this insertion of this Niessbrauch provision?

"A. Probably everybody's. There again, you must think of the situation, that we did not know what was going to happen. I personally felt that the Nazi had a good possibility of getting into power, and their programs were printed all over the place. So there was a possibility that some day, capitalists would be very happy if they could walk out of their country with their hat on and

232 would know where to go. Now, naturally, Geheimrat von Opel always had a claim against his son. If the father could not take care of himself, he could always ask his son to take care of himself, but the extent he had to take care of himself was not the same as if he got a proper usufruct.

"You see, there were two ideas. In the first place, the substance had to be preserved outside of Germany. It was my opinion that that could only be done if there was 100 percent, an absolute, transfer of title to the substance to Fritz von Opel. I have seen such cases before. The second thing was if everything went wrong in Germany, the same way it went wrong in Russia before, he would still have something outside that he could fall back upon. It would not be the substance, but it would be part of the fruits of the substance that he would have for himself, and for his wife in an emergency. And, there again, we did not complete that in this agreement. We opened the doors. We expressed intentions understandable. We relied more on the son carrying out the expressed intentions in the case of emergency than pinning it down in a legal agreement as you would do if you were giving away part of your fortune to a stranger with no obligations and, certainly, no moral obligations.

"Q. If that was the purpose, would your objectives not have been just as well served, or better been served, by leaving out any references to Niessbrauch instead of
233 specifying the circumstances, such as Niessbrauch, since it involved a transaction between father and son?

"A. Yes. It is very easy today to decide what would have been better or what would not have been better, and I agree with you that probably Niessbrauch was not the best way. It was started by Hachenburg to throw in Niessbrauch. Personally, I would have probably only mentioned the intention to do this and would have expected the son to carry it out. It could have been done in a different way.

"Q. You were the final draftsman of this agreement, were you not?

"A. I agree. I had just about as much time for drafting as you have for catching a lunch, and so on. Nevertheless, it does not make any difference, as far as I am concerned, because it could have been handled that way if they

wanted to. You see, they wanted a much more elaborate setup.

"Q. They insisted on the insertion of this Niessbrauch?

"A. Something to that effect. At that time Niessbrauch was used, yes. It may not be the proper thing to mention this, but I would think Wilhelm von Opel also wanted to have a little whip in hand some time over Fritz that he could use suddenly. He had so much money and income out of this that he would know he had to talk to his father about it any time his father wanted him to do so.

"Q. So, Fritz von Opel was not pleased with the
234 insertion of this Niessbrauch?

"A. I would not say so.

"Q. Now, you drafted these Niessbrauch provisions in their final form. Were they validly created?

"A. The Niessbrauch?

"Q. Yes.

"A. All I can say was that I drafted this agreement. I knew that this agreement itself was not more than a letter of intention, as far as that is concerned, but always relying on the father and son relation. I would say it goes a little further, because I would say it is worded in a way that the father could sue Fritz von Opel to create a Niessbrauch under agreement. I think that is the case. But, we did not talk about law suits at that time. I do not think they ever had them, as far as I know.

235 "Q. I call your attention to a statement made by you in your affidavit of June 6, 1935, Defendant's Exhibit No. 34,"—Now Defendant's Exhibit No. 8, old 34—"in which you say, 'The clauses in the deed of gift relative to the usufruct reserved to the parents of Fritz von Opel were particularly insisted on by Dr. Wilhelm von Opel, who said that he attached the greatest importance to this restriction on and reservation from the gift. As drawn by me, the deed of gift, Exhibit R, was drawn for the purpose of carrying out the intention of the parties so expressed.'

"Is that statement correct that you made at that time?

"A. He did think it was important to have Fritz still a little bit under control, as far as the income was concerned, and if he went haywire, he could step in and put him on the right track.

"Q. So, the Niessbrauch was something that was to be immediately effected as a potential whip or so, as you termed it?

"A. I did not say that, that it had to be immediately effective. Everything here was only pointing the way they wanted to handle things.

"Q. Unless the instrument created this power of Wilhelm over Fritz, the intention of the parties would not have been carried out?

"A. Well, the gift was not carried out by that
236 document, neither. They were both relying on each other that they would.

"Q. I call your attention further to a statement in your affidavit of June 6, 1935, in which you state as follows:

"'In German law, the right of usufruct (niessbrauch) was and is recognized to be a separate estate in the thing and to be a real thing or right in rem (dingliches recht) in the thing. By virtue of this concept of German law, and the deed of gift itself Dr. Wilhelm von Opel and his wife retained an independent property right in the securities described in the deed of gift and in any and all proceeds thereof, which independent property right gave the parents certain definite rights and powers under German law with reference to said securities and their proceeds.'

"You then specify the various rights of the parties involved in this Niessbrauch.

"You still think that this statement states the law correctly as it applied to this particular transaction?

"A. Let's put it this way: I was under the assumption that everything had been done to carry out the letter of the deed and to make it really effective. I did not know it had been. In case it had, those were the conditions.

"Q. You mean to say now that you made an affidavit in 1935 to the Court without ascertaining from the parties involved what was actually done pursuant to the
237 agreement you drafted?

"A. I gave a legal opinion on conditional situations, but I did not pass any opinion on the transactions they had done without asking me, and afterwards I did not know how they had done it. I was under the impression that they had been done at that time, that both had been made effective.

"Q. But you did not make a statement on German law, as a legal expert alone; you make this statement as the draftsman of the agreement; you made statements in this affidavit as to the intentions of the parties and so on?

"A. Those were the intentions, yes. Whether they carried them out, that was something else. I did not say they carried them out, because I really did not know. In fact, I must say I took it for granted they did.

"Q. I am reading now another portion of this affidavit, and I am quoting as follows, from page 34 of the transcript of record:

"'I am informed that with part of the proceeds of the securities described in the deed of gift, Exhibit R, Mr. Fritz von Opel purchased shares of a Swiss corporation, Uebersee Finanz-Korporation A. G. If this be the fact, I am of the opinion that under German law the above-described rights and obligations based on the reserved usufruct would attach to the Uebersee Finanz-Korporation shares in the same manner as if these shares had been described in the deed of gift itself.

238 "'I am informed that with part of the proceeds of the securities described in the deed of gift, Exhibit R there was purchased a quantity of gold now situated in the United States. On this assumption of fact, I am of opinion that under German law the above-described rights and obligations based on the reserved usufruct

would attach to this gold in the same manner as if the gold had been described in the deed of gift.'

"From these statements, it would appear that you obtained information from Mr. Fritz von Opel or somebody who had knowledge concerning the affairs of the Uebersee Finanz-Korporation as to what was actually done after you had drawn up the gift, and you stated in this affidavit on the basis of your information so obtained; is that correct?

"A. Everything is correct that is in there. The way it was stated there, I was informed that was the case. If that was so, those are the consequences, under the assumption that the original niessbrauch was actually effected, because, otherwise, nothing was part of it up to that point.

"Q. Did you have any doubt, or do you have any doubt now, as to the correctness of the statement made in this affidavit?

"A. Which statement?

"Q. This last statement, 'I am of the opinion that under German law, the above-described rights and obliga-
239 tions based on the reserved usufruct would attach to this gold in the same manner as if the gold had been described in the deed of gift.'

"A. Well, it would follow very definitely. If the substance changes from one substance to another, the usufruct stays on there. At some place, it has to be real created niessbrauch. If it has, then, the substance remains a subject of niessbrauch.

"Q. Well, coming back to your affidavit, you did state there, did you not—

"A. (Interposing) If it is there, I did.

"Q. —independent property right was effectively created?

"A. Let me see what I said?

"Q. If you care to read the entire affidavit, just take your time.

"A. This, I would say, is only correct with the assumption that it was actually carried out the way that it was intended.

"Q. Did you spell out any such assumption at that point?

"A. I do not think I had any doubt at that point. I must have been given that impression that it was, but I would not go into that. That must have been my impression at that time, otherwise I would not have said it.

"Q. Mr. Stansfield, did Wilhelm von Opel ever
240 discuss with you the advantages of having Fritz von Opel classified as a devisenauslaender, or foreign national, within the meaning of the German Foreign Funds Control Laws?

"A. We discussed the possibility of having Fritz von Opel outside and the advantages that might have, in some respects, long before there was this devisengesetzgebung, that we are talking about.

"Q. And what were the advantages that you saw in having him classified as a foreign national, non-resident of Germany?

"A. Well, to prevent him from being subject to laws that might be—might come out in the future, where it would be of importance.

"Q. Was this qualification or classification of Fritz von Opel as a devisenauslaender or foreign national, for purposes of Foreign Funds Control, discussed at the time when this 1931 agreement was made?

241 "A. I don't remember that at that time there was much talk about that.

"Q. Did Wilhelm von Opel ever express himself to you as to the advantages of having Fritz von Opel so classified, after Fritz von Opel had left Germany?

"A. Well, we have discussed the advantages. We had seen so many examples of situations like that, from people who came from Russia; and we know about what had happened to them; and from other countries; that we have talked about those things. I was very much aware of the

importance of it; and I don't know how much we had to talk about it. We had demonstration lessons since 1917 directly in front of our nose. I think every American today understands it, more when they see the Hungarians and the Czechoslovakians, and all these people come over here.

"Q. Do you know whether Wilhelm von Opel ever tried to modify the escrow agreement of 1929, by negotiations with the officials of the General Motors Corporation, before this alleged gift agreement of 1931?

"A. I think from the very beginning they disliked the fact that they were going with the mark up or down. They didn't like that, that General Motors would not run the risk of what happened to the mark; and they didn't like it so much.

"Q. Why shouldn't it be to the advantage, in a
242 way, to General Motors, if it is a disadvantage to the Opel family?

"A. Well, they didn't know—it was a risk to both sides. If they could have pinned it down to exact, absolute figures, that they would have liked to have done; but that, they couldn't do.

"Q. Do you recall whether there were negotiations concerning a modification of the escrow agreement along these lines?

"A. You mean after the escrow agreement was made?

"Q. Yes.

"A. I remember up to the point, there were a lot—at the moment, I don't remember any talks—you mean between '29 and '31?

"Q. That is right.

"A. I don't remember any at the moment.

"Q. If such negotiations took place, would you have been one of the negotiators?

"A. It could be. They could also have taken it up directly with the head office.

"Q. I was speaking just now of modifications prior to the alleged gift agreement of 1931. Do you know whether after

that date, there were any negotiations concerning such a change?

"A. After the gift agreement?

"Q. Yes.

"A. I don't remember, from my own recollection, that there were any such.

243 "Q. Mr. Stansfield, I am showing you now Defendant's Exhibits 6 and 7, and ask you whether you have ever seen these before?

"A. What is it, on page 4 here? I see now what it is. It is a cable. I just didn't know what—

"Q. This here (indicating).

"A. I remember that Geheimrat von Opel—I am trying to remember. There was something between Fritz Opel—that is, old Fritz Opel—and Wilhelm von Opel; they had an argument always about this.

"Q. What was the argument about?

"A. About the gold clause. In fact, from the beginning it was very strong objection not to have that in. People were not afraid in 1928 of the dollar, or 1929 of the dollar; but they were afraid of the mark. But I do not recall detail about this. I mean, in detail, I don't remember what this all was about.

Wilhelm von Opel personally, probably would have preferred—there is another one; that is their reply, yes?

"Q. Yes.

"A. I really don't remember this exchange of cables. I don't remember it. It was not in line with my thinking on the whole plan.

"Q. Do you remember what happened after the execution of this agreement on October 5?

244 "A. Well, in what respect? A lot of things happened.

"Q. Well, in accordance with what the parties planned at the time, as you understood it?

"A. Well, if I remember correctly, Fritz left almost immediately for the United States; and as I stated this morn-

ing, I believe, already, I felt the easiest way to handle it was to get it out of the hands of General Motors. For that reason, if I saw the telegram of the third, I believe I would have advised against it.

"Q. Do you know when Fritz von Opel came back from the United States?

"A. Fritz did?

"Q. Yes.

"A. No.

"Q. Was it immediately or—

"A. I don't remember.

"Q. You do not remember?

"A. Not at this moment. I don't remember. If you will help me, maybe—

"Q. Do you recall a visit by John Thomas Smith, the general counsel of General Motors in Ruesselsheim, about that time, or somewhat later?

"A. I recall a number of visits of John Thomas Smith; and I don't think I could fix any dates at all with regard to it.

245 "Q. Now, after October 5, 1931, did you at any time discuss this agreement, or its execution with Wilhelm von Opel or Fritz von Opel?

"A. The execution of the agreement?

"Q. That is right.

"A. No, I don't—I don't remember. I would have only discussed it if they asked me any more questions.

"Q. Well, did they ask you any more questions after that?

"A. I don't remember.

"Q. You do not remember?

"A. Nothing, as far as I was concerned, nothing of importance happened where I was acting for them in that respect. They did it without me, whatever they did, after that.

"Q. Were you ever consulted by either Wilhelm von Opel or Fritz von Opel concerning any taxes payable on this transaction?

"A. Well, we were very clear that gift tax would have to be paid; and that was discussed; but it was not my business to say how much the gift tax would be, and how that had to be handled; because they had their tax experts.

"Q. You did not deal at all with the tax aspects of this transaction?

"A. If I talked about taxes, it was only in a very general way; but not for me to act as an expert on it.

"Q. Do you know whether Wilhelm von Opel had
246 disagreements or difficulties with the tax authorities, concerning the amount of taxes payable?

"A. He would have been quite an exception, if he didn't have some difficulties with the tax authorities in those days, I would say. Anybody who had a lot of money had a lot of discussions.

"Q. But you do not remember anything definite about that?

"A. You see, I remember very much later—but that—

"Q. When was that?

"A. That had nothing to do—in '33; yes, in '33 and '34, there were tax—difficulties—I don't know; it had nothing to do with taxes, I believe. I am not quite sure.

"Q. Then you are not speaking of tax difficulties in 1933 or 1934?

"A. No, I don't think so.

"Q. And you did not discuss these tax aspects of the gift with officials of General Motors either?

"A. Of the gift? I didn't discuss the gift with the officials of General Motors at all.

"Q. You never did?

"A. I don't remember that I ever did; and I don't think I did. I feel pretty sure I didn't.

"Q. And you say—

"A. In fact, I did not want to involve them in the whole thing.

247 "Q. And you say that you did not consult with them on the tax aspects, either, of that gift?

"A. General Motors?

"Q. That is right.

"A. I don't quite see what aspect I should discuss with General Motors, as far as the gift is concerned. I don't see your point. Maybe it is—

"Q. Do you recall that a proposal was made at one time to repurchase this minority interest on the part of Wilhelm and Fritz von Opel, or Wilhelm von Opel alone?

"A. I do; because I came over to the States in connection with that.

"Q. Had this proposal anything to do with the problems of German taxation, in which Wilhelm von Opel was involved, as a result of the gift?

"A. I really don't know now, at this moment, what was the reason why they wanted to discuss that at all. I wouldn't know at the moment.

"Q. Do you remember whether the Opels at one time suggested to the officials of General Motors Corporation that the Opels should reacquire the interests that they had transferred, this minority interest that they had transferred, in a purely fictitious fashion, so as to make the Opels appear again as the owners of this minority interest?

"A. There was some pretty wild scheme, I be-
248 lieve, that was not acceptable to General Motors, at all, the way it was put up.

"Q. It was put up by the Opel family though?

"A. I think so, yes; was brought up by the Opel family.

"Q. That they would reacquire the shares in a purely fictitious way?

"A. I wouldn't use the word 'fictitious' because I don't remember the detail of it. It never came off; and it did not—

"Q. I show you now a letter dated June 2, 1932"—

Mr. Gallagher: I want to point out at this point, Your Honor, we are supposedly offering the testimony at this

point. I mean, it is our witness. And at this point we would not have offered this, because it is sheer hearsay.

If you want it read, because you think it is relevant to the part read, I want the record to reflect that you are reading it in. I am just pointing out I would have omitted this.

The Court: Then you do not offer it?

Mr. Gallagher: We do not offer it.

The Court: Mr. Laufer was examining the witness.

Mr. Gallagher: That is right, Your Honor.

The Court: If you don't offer it, then I think he will have to offer it on cross; otherwise it won't come in.

Mr. Gallagher: All right, Your Honor.

249 The Court: Are we getting anywhere near the end of this?

Mr. Gallagher: There is about twenty minutes left, I think.

The Court: Then I think we had better adjourn. I have to complete a case tomorrow morning; so you be here at 11 o'clock. We will adjourn until 10, and this case will be resumed at 11 o'clock.

(Accordingly, at 4:20 p.m., the trial was adjourned until 11 o'clock tomorrow morning, Friday, December 10, 1948.)

* * * * *

252

Deposition of MANFRED STANSFIELD (Wronker-Flatow) (Resumed)

Mr. Burling: Your Honor, I was reading from page 206, and I was asked to start skipping. I will ask counsel to advise me how far they would like me to skip.

Mr. Gallagher: I would skip the next four or five
253 pages, all the way over to 210, starting "Mr. Stansfield, are you today," and so forth.

(Accordingly, the reading from the deposition was resumed, Mr. Burling reading the questions and Mr. Boland, on the witness stand, the answers:)

"Q. Mr. Stransfield, are you today indebted to Mr. Wilhelm von Opel?

"A. No, I don't consider myself indebted to Wilhelm von Opel.

"Q. Mr. Wilhelm von Opel has stated to the American Military Government that you owe him a considerable amount.

"A. That is his privilege; but it is my privilege to say that I am not.

"Q. On what grounds do you state that?

"A. Do I have to state here why or what? Is that a question that has anything to do with this? If he brings up the case, he states on what ground it is; I will state on what ground it isn't. Is that a question that—

"Q. I think you are required to answer the question, why you don't consider yourself indebted to Mr. Wilhelm von Opel.

"A. It was set off through services on my side.

"Q. When were these services performed?

254 "A. Oh, during the years.

"Q. What years?

"A. My personal opinion is that there was never any intention to ask it back; but that is a matter, in itself.

"Q. I show you a photostat of a document dated March 16, 1931, and ask you whether that is your handwriting and your document.

"A. Definitely my handwriting, my document. I haven't seen it since.

"Mr. Laufer: Will you please mark this document as Defendant's Exhibit D-36; and I offer it."

Mr. Burling: If Your Honor please, the exhibit we now mark bears directly on the issue whether Wronker-Flatow should be here, and I therefore ask leave to read it, in the translation, or ask Your Honor to read it.

Mr. Gallagher: No objection.

The Court: You may read it.

Mr. Burling: The exhibit reads, in the translation:

"Wiesbaden, March 16, 1931. (Rosselstrasse 7).

"I, the undersigned attorney Manfred Wronker-Flatow, acknowledge having received from Geheimrat Dr. ing. h.c. Wilhelm von Opel a loan of 20,000.00 Dollars. Interest thereon is to be paid at the end of each period at the Reichs-
bank discount rate current at that time beginning
255 on April 1, 1935; for the first time on July 1, 1935.

Repayment is to be made by 10 annual instalments of $2,000.00 each (two thousand Dollars United States Currency) beginning on April 1, 1936; first instalment payable on April 1, 1936; for the consecutive years likewise on April 1. As collateral serve the life insurance policies which I have taken out in favor of my wife with the Iduna Life Insurance and with the French Life Insurance L. Urbaine in the amount of RM40,000.00 respectively Francs 125,000.00, which will become payable, except in case of death, in the years 1947 respectively 1948. My wife Alexandra Wronker-Flatow, nee Manzel, recognizes by her signature this agreement as also binding for herself.

sgd. Manfred Wronker-Flatow
sgd. Alix Wronker-Flatow."

Mr. Gallagher: What was the date on that, Mr. Burling?

Mr. Burling: March 16, 1931.

I ask that that be received in evidence.

(The letter heretofore identified as Defendant's Exhibit No. 28 was accordingly received.)

* * * * *

AFTERNOON SESSION

The Court: All right, gentlemen.

Deposition of MANFRED STANSFIELD (WRONKER-FLATOW) (Resumed):

Mr. Burling: At the bottom of page 211—

(Mr. Burling reading the questions and Mr. Boland, in the witness chair, reading the answers):

"Q. Did you render any services to Mr. Wilhelm von Opel after 1937?

"A. Wilhelm von Opel?

"Q. That is right.

"A. No, I don't think so. I don't recall.

"Q. I am showing you now a photostat of a letter dated March 8, 1937, and ask you whether you identify this letter as written by you?

"A. Yes, I see this; that is my letter. That was written for a purpose for Geheimrat and for Nazi purposes."

Mr. Burling: I would like to have this letter marked as Defendant's Exhibit 29 and 29-A, and I offer it in evidence.

(The letter was accordingly marked and received in evidence as Defendant's Exhibit 29 and 29-A.)

Mr. Gallagher: Does Your Honor wish a copy of this?

The Court: He can read it, if he wishes.

Mr. Burling: I should like to read it, if I may—

"New York, March 8, 1937. 123 W. 57th Street.

"Dear Geheimrat: First of all I have to apologize for my long silence. I was never before aware how difficult it is to write letters in which one is compelled to admit

being unable for the moment to live up to obligations previously incurred.

"You, dear Geheimrat, know that I incurred these obligations under circumstances which seemed to guarantee that I would be able to meet them. In spite of the most successful pioneer work for G. M. and the Opel firm, I have been deprived without any fault on my part of the very foundations of an arrangement, when things took a turn which no sensible and intelligent man could have been expected to take into consideration. Now after fifty
271 years of most strenuous work and of great success I find myself with my wife in a more and more exhausting struggle to earn a living and enough money to support and educate our six children.

"To be forced in such times to write about repaying sums of money which are entirely out of proportion to my present situation is paralyzing to such a degree that one postpones it again and again hoping to be able to write something positive. The delay has become unduly long, and I am sincerely grateful to you for not having doubted my good will to pay my debt in spite of my long silence which would have been incomprehensible under normal conditions.

"In the last three years full of work and worry, which are now behind us, I hope to have laid the foundation of an organization which in 1937 ought to yield enough to enable me to start redeeming my debt. I am confident to be in a position to submit to you positive proposals in 1937, probably during the next six months and would be very grateful to you for having patience until then in view of the prevailing circumstances which were brought about through no fault of my own.

"Please rest assured that although everything I had built up in decades has been destroyed, and in spite of all obstacles and all difficulties which often seem in-

272 surmountable, my intention remains unshaken to meet liabilities which I incurred in good faith.

"Since my health has so far withstood all the hard physical and mental trials and tribulations and the constant climatic and other changes, I have not given up hope that there will be a way out of all this darkness.

"My wife joins me in sending you our kindest regards and compliments, which we beg to convey to Mrs. von Opel, too.

"With our best wishes for your personal welfare,

"Yours very truly,

"M. Wronker-Flatow."

Mr. Burling (continuing): Now do you wish me to read Mr. Connor's objection?

Mr. Gallagher: You don't need to read the objection; we don't have an objection. We withdraw the objection.

(The deposition resumed):

"Q. Mr. Stansfield, did you discuss your testimony today with anybody before you came here?

"A. Before I came here? My—

"Q. Your testimony that was given today?

"A. I have been talking about the case off and on, with Fritz von Opel.

"Mr. Laufer: That is all."

(Mr. Gallagher now reading the questions, Mr.
273 Boland the answers):

"Cross Examination

"By Mr. Connor:

"Q. Directing your attention back to the general time around 1931, when this gift agreement, Plaintiff's Exhibit 5, was made, will you give us, if you know, what the general mode of living of Geheimrat von Opel was?

"A. Well, that of a wealthy bourgeois who knew the value of money, for which he and his family had worked a lifetime.

"Q. I presume that you knew something of his financial position, did you not?

"A. Well, in a general way, everybody knew something about it; but I knew, because I knew at least what he had received out of this deal.

"Q. Well, was Wilhelm von Opel, as you knew him, a man whom you regarded as one living within his income, or up to his income, or beyond his income?

"A. I would say, well within his income.

"Q. Did he have any yachts?

"A. No; I think he would have reproved you, if you suggested it.

"Q. Was he the kind of a man to indulge in any other similar types of luxury that you know?

"A. The only luxury that I know was that he once
274 or twice made a travel around the world, for which he had waited many, many years, I believe. He was not only very careful with his money, but also with his time; and he planned his days and every hour of the day, weeks ahead, as a rule.

"Q. From your association with the von Opels; that is, Wilhelm and his son, Fritz, what would you say of any independent capital that Fritz, himself, had about the year 1931? Was he a man of capital himself?

"A. Fritz von Opel?

"Q. Fritz von Opel, the son.

"A. If he had some, I didn't know it.

"Q. You testified earlier, I believe, that of the number of Opel family members involved in the Opel works, Fritz, to your understanding, was the only one who had not obtained his share, or whatever you characterized as his share?

"A. That is correct.

"Q. That is correct?

"A. Yes.

"Q. And I believe you also testified that Fritz von Opel's sister the daughter of Wilhelm von Opel, had, prior to that time, received some gift of substance from her father; is that correct?

"A. That is what I always understood from the
275 parents.

"Q. What position did Fritz von Opel occupy in Adam Opel when you first contacted the situation?

"A. In '28, if I remember correctly, he was in the engineering, and with his uncle Fritz Opel. I don't want to take that on my oath; but that is my recollection, that he was working on that side; and his uncle was always very fatherly with him, and friendly with him, except when they had fights. But that is also—that is in retrospect. It was always on a very fatherly basis.

"Q. And as far as the family hierarchical arrangement was concerned, was Wilhelm von Opel the senior brother of that generation of brothers?

"A. Only the two were left, Fritz and Wilhelm von Opel. I think Wilhelm very definitely was, whether Fritz always recognized it, Fritz Opel, that I wouldn't say.

"Q. But on your first contact—

"A. A difference of opinion between those two, but I don't believe between anybody else.

"Q. So that at your first contact with Adam Opel, Wilhelm von Opel was regarded as the head of the firm?

"A. I would say so; and it was also expressed in the set-up after it was taken over, because Wilhelm von Opel was the chairman of the board, and Fritz Opel was
276 the vice chairman of the board.

"Q. Yes. And Fritz von Opel, the son of Wilhelm, was Wilhelm's son; was he not?

"A. That is correct.

"Q. And as among the von Opel children, who were Fritz von Opel's cousins, he, in turn, was senior to them, in age; was he?

"A. He was senior to all in age, I say right away; I mean the boys. I don't know whether Hans was older or younger; but I believe he was younger. I mean, that is a fact; but I know he was very definitely the one who you would consider the crown prince in the situation; which, again, was expressed in the position that he got when it was changed in an aktiengesellschaft, because he was made a member of the Vorstand, and I believe, the only member of the Vorstand at that time.

"Q. You are now talking about Fritz von Opel having been elevated to those positions?

"A. Right; whereas Hans von Opel, the next by age, was not even a member of the Vorstand.

"Q. Now, after General Motors took over the Opel works, do you know anything of a trip by Fritz von Opel to the United States to take a training course in General Motors' plants here in America?

"A. Yes, I remember that.

277 "Q. Will you tell us what you remember in that connection?

"A. I think up to the fall of '29, it must have been, Fritz von Opel and Keith Wood were the members of the Vorstand. I don't want to take that on my oath, as far as the dates are concerned; but I believe it was about that. And then I. K. Reuter came over and was made the other mem-

ber of the Vorstand, I believe, together with Keith Wood again; and Fritz was then—it was suggested that he go out of Germany and study General Motors' methods, and so on. That was the set-up with General Motors.

"Q. And after he had made this educational trip to General Motors in the United States, did he return to a position with General Motors in Belgium, I believe, in Antwerp?

"A. I know that he was in Antwerp, yes, with General Motors, Continental.

"Q. Do you happen to remember in what capacity?

"A. No, but it was in the Export. General Motors, Antwerp, was a company which belonged to the Export Corporations of General Motors.

"Q. And is it the fact that at or about the time that the so-called gift agreement, Plaintiff's Exhibit No. 5, was made, that Fritz von Opel was resident in Belgium?

278 "A. I think that is correct. I couldn't swear to it. I mean that is also a question of fact that can be established; but I think he was.

"Q. Yes. And from your knowledge of the situation, and from what you have already testified to, in respect of Fritz von Opel's position with the Adam Opel works, was it the probable thing that had General Motors not purchased the Opel works, that Fritz would have been the logical head of the firm?

"A. Would say, hundred percent, yes, sir.

"Q. Of course, after the sale of the Adam Opel works to General Motors, the opportunity for Fritz von Opel, the son, to have become head of the enterprise was gone; was it not?

"A. Practically, I would say, yes.

"Q. And this Adam Opel works was a family institution of some—

"A. Generations.

"Q. —generations of standing?

"A. About 70 years, it was at that time, yes.

"Q. Did the fact that Fritz von Opel would thus have become deprived of his opportunity to succeed his father as head of the Adam Opel works have anything to do with the old gentleman, Wilhelm, making the gift
279 to the son?

"A. It might have been an additional consideration.

"Q. Now, on your direct examination, in connection with Plaintiff's Exhibits No. 5 and 5-B, which purports to be the original thereof, you were asked some questions by Mr. Laufer as to that instrument being executory in its nature. Do you recollect that interrogation?

"A. Yes. Could I see what 5 and 5-B was?

"Q. This is 5 (indicating) that purports to be the English translation. This is 5 and that is 5-B.

"A. That is the same document in different languages, then, yes.

"Q. Exhibit 5 is a translation of the German document and 5-B purports to be a photostatic copy of the original document.

"A. I see.

"Q. I would like to have you re-examine them, and when you have completed it, I want to interrogate you about them.

"A. I am sorry, I didn't have this quite some time; so I don't have to remember the whole thing now, will you tell me what you are referring to? In a general way, I remember it, but in detail I had better look at it again, where you want me to.

"Q. I will direct your attention to a paragraph
280 that is the fourth paragraph in this exhibit which, in English, reads:

"'I, Wilhelm von Opel, herewith transfer title to these shares to our son, Fritz von Opel, by assigning to him our claim for the delivery of these shares to us.'

"And I will ask you whether, under German law, you have a concept similar to what, in the English or American law, is referred to as a chose in action?

"A. Yes, it is almost verbally from the law, this paragraph. Paragraph 931. Do we have a translation, so I don't have to try to translate it?

"Q. You say there is some provision in the German law which relates to something which is analogous to the English chose in action?

"A. Yes; and it is almost identical in the wording with the law, this part.

"Q. Well, would you make an effort to translate the German law provision for us?

"A. If a third party is in the possession, then the transfer may be replaced by procedure whereby the owner assigns the right for delivery.

"Q. Now, will you state for the record, Mr. Stansfield, a description of the document from which you are reading that portion of the German law?

"A. Well, this is one of the ways by which the
281 ownership can be transferred, instead of actually handing over the article that is to be transferred, you just assign the right to demand delivery from a third party, who is in possession of it. This is, in fact, what was done here in the fourth paragraph.

"Q. Could you give us the name of that book?

"A. This is the German Civil Code; this is Paragraph 931.

"Q. Is that any particular edition of the German Civil Code?

"A. Oh, my God, 1905. That was the book I had when I was a student; but it is still in order. I worked so hard on it; and that is why I have it here. I can pick it up always.

"Q. And will you give us the section number of the Code that you translated just above?

"A. 931; and it is the third title in the third book of the German Civil Code. It refers to the transfer of property. It is the acquisition and the loss of the ownership of movables.

"Q. And was that provision of the Code, to which you have referred, operative and the effective law of Germany at the time Plaintiff's Exhibits No. 5 and 5-B was executed?

"A. That is correct.

282 "Q. Now, these words of transfer in the fourth paragraph of Plaintiff's Exhibits 5 and 5-B purport to be a transfer of a chose in action; do they not?

"A. That is what I would say, yes.

"Q. Well, doesn't it say right there:

"'Transfer title to these shares to our son, Fritz von Opel, by assigning to him our claim for the delivery of these shares to us.'

"A. That is correct.

"Q. Now, isn't it, in your opinion, a chose in action which is described by the words, 'our claim for the delivery of these shares to us'?

"A. That is what I would say, yes.

"Q. Well, is there any question about it?

"A. Well, I only express myself carefully, because when you use legal expressions in law, that you don't really know 100 percent, I don't like to be positive; but I think it is the same.

"Q. So that we understand the English concept, if we assume that a claim against another person, or a corporation is a chose in action—

"A. Yes.

"Q. —within the meaning of the English law, do not the words of the fourth paragraph of Plaintiff's Exhibits 5 and 5-B, actually presently transfer a chose in

283 action?

"A. Yes, they do, yes.

"Q. And if those words in the fourth paragraph are a present transfer of an existing chose in action, is there anything executory about the effect of that paragraph? In other words, isn't that a present transfer of the chose in action?

"A. Well, it was a transfer at that moment, yes; because the wording is exactly in line with the law. I must say that; I had to refresh my mind on that.

"Q. And isn't it the fact that if the effect of that language was to convey to Fritz von Opel at once, that is, at the date of the agreement, this chose in action, nothing further remained to be done in order to effect that transfer?

"A. It is correct.

"Q. This morning you were interrogated about the niessbrauch, which is referred to in Plaintiff's Exhibits 5 and 5-B and you gave certain explanations which you recollected, in reference to the reasons for that niessbrauch being incorporated.

"Do you know when Fritz von Opel married Margo von Opel?

"A. I don't know the exact date.

"Q. Well, approximately the year?

284 "A. But it was either '29 or '30, early '30 or late '29, I would say.

"Q. Do you recollect any discussions with the old gentleman in respect of his desire to have Fritz marry the daughter of some other industrial parent?

"A. Yes, quite a lot of them.

"Q. What did he express as his desire in that connection?

"A. Well, he was not very favorably impressed by the marriage. I wouldn't like to go much further. He didn't like the idea.

"Q. And was it because of his desire that Fritz, as I

say, marry the daughter of some industrial family, rather than a person outside of that group?

"A. Well, I would say, yes. It was the impression that I got. He was quite outspoken at this time; but at this time Fritz von Opel is married to the same girl; so I don't want to go into too much detail at this point.

"Q. Might I just add in that connection, weren't most of her friends theatrical people?

"A. Yes.

"Q. Or people in the field of arts?

"A. Yes, she came from those. I think her former husband was directly connected with the theatre. In fact; I know he was.

285 "Q. Isn't that, as a matter of fact, one of the reasons why the old gentleman was not as enthused about the marriage as he would have been had she been the daughter of some industrialist?

"A. So I would say. The old Geheimrat liked the theatre very much, but not particularly for marrying.

"Q. Now, following the date of the gift agreement, Plaintiff's Exhibit 5, Plaintiff's Exhibit 4 purports to be given by Wilhelm von Opel to his son, Fritz, or sent to him. Now, this Plaintiff's Exhibit 4 purports to be a power of attorney from Wilhelm von Opel to his son, Fritz von Opel, dated the sixth day of October, 1931, a date subsequent to the date of the gift agreement.

"I believe that on direct examination, your testimony was to the effect that it would have taken a considerable period of time, and made the transaction more complicated, if Fritz attempted to deal with the General Motors people under the gift agreement, rather than having a direct power of attorney. That is my understanding of your testimony.

"A. That was my opinion, yes, sir.

"Q. Yes, sir. And is that the reason, as you understand it, why this power of attorney was given to Fritz?

"A. Definitely. I have done that in many cases.

286 "Q. Yes. Well, why would the old gentleman give his son a power of attorney to deal with the shares of stock if, in fact, he, on the day before, had given him a gift? Will you explain why that was done?

"A. The main reason, as I stated this morning, I believe was the urgency to see that it got out of the hands of General Motors at the earliest possible moment; and I was afraid, and I believe I was rightly afraid, that if he came up with a legal document involving gifts, and niessbrauchs, and ausgleich der erbschaft, and so on, they would have gotten a half dozen German lawyers in to explain the meaning of this agreement; but when he came in with a power of attorney, he could get it out without any of the difficulties, because that was written in their own language.

"Q. You say that you had done a similar sort of thing in other cases. What did you have reference to when you said that? I don't want the details of the cases, but give us a typical situation.

"A. I had many international situations, where, to avoid having to go into the details of the transaction, it was handled by powers of attorney.

"Q. Yes.

"A. In cases where the transfer was already made.

"Q. Is it not the fact that in Germany, for instance,
287 in connection with the sale of real property, the purchaser is, as a matter of practice, frequently given a power of attorney of the seller to execute the transfer of title to himself?

"A. Yes, to make the application—what would you call that—for auflassung, for the registration of transfer of title in the records of the Court; and in many cases, the sale was immediately effected, payment was made before the Notary Public, and for some reason, the auflassung was not made immediately; and then the purchaser was

given an irrevocable power of attorney to make the transfer by himself, the transfer. That was quite the practice.

"Q. And in view of that custom in Germany, there was nothing inconsistent about the father giving Fritz this power of attorney; that is, Plaintiff's exhibit 4; was there, in your opinion?

"A. In my opinion, no; because it was just a way of handling it, the quickest way of handling the matter, speeding it up.

"Q. Was there anything in anywise inconsistent between a completely executed gift on October 5, 1931, and the delivery of this power of attorney on October 6th?

"A. In my opinion, no, because, otherwise, I would
288 not have done it that way.

"Q. Now, this morning, there was directed to your attention Defendant's Exhibits 6 and 7, purporting to be a telegram dated October 23, 1931 from Wilhelm von Opel to Mr Sloan, of General Motors Corporation, in which reference is made to the first person; namely, the word 'I'. Now, in view of what you have stated in reference to the power of attorney, Plaintiff's Exhibit 4, will you take a look at Defendant's Exhibits 6 and 7, and state whether there is any inconsistency in the use of the word 'I' in Defendant's Exhibits 6 and 7?

"A. As far as the General Motors, the front with the General Motors was concerned, it was Wilhelm von Opel's shares; therefore, if he had said anything else but 'I', then, they would have started asking a lot of questions. They didn't know anything about this agreement. In fact, with my knowledge, it was never brought to their attention.

"Q. So that, to have referred in this telegram of October 23 to the shares as belonging to Fritz von Opel would have given rise to the same complications that you spoke of?

"A. Right.

"Q. In connection with attempting to execute the trans-

action by presenting the gift agreement, itself, to
289 General Motors; is that correct?

"A. Right.

"Q. Isn't it the fact that it was Fritz von Opel, who, himself, and irrespective of his father's desires in the matter, finally made the determination as to how the option with General Motors should be carried out?

"A. I think that is true, yes, sir. Do you mind if I add one sentence to this whole thing? I think this whole telegram, now that I read it, is an expression of the uncertainty of the situation. If you did something, you never were sure that you were doing exactly the right thing. After talking to Mr. Mooney, the Geheimrat got shaky, whether Fritz von Opel shouldn't rather keep the stock than sell it.

"Q. That is Fritz, the son?

"A. Yes.

"Q. Going back for a moment to Plaintiff's Exhibits 5 and 5-B, I will direct your attention to a paragraph appearing therein which, in the English, reads:

"'In the event that the parents von Opel shall not have drawn in full or in part the income from the shares accruing to them by virtue of their usufruct (neissbrauch), the advancement to Fritz von Opel shall be deemed to have increased by the income not drawn, and he shall be accountable therefor.'

290 "I would like to ask you whether it was not the fact that, in the event the parents did not call for, or make demand for, the income which accrued on the corpus of the gift, that that uncalled for income would become a part of the corpus of the gift, itself?

"A. Yes. That is still clearer in the German. I didn't quite get the paragraph. I believe it is this one.

"S 931. Ist ein Dritter im Besitze der Sache, so kann die Uebergabe dadurch ersetzt werden, dass der Eigentuemer dem Erwerber den Anspruch auf Herausgabe der Sache abtritt."

Mr. Baum: If I may, Your Honor, when this was transcribed, I think the reporter made a mistake, and this was intended to refer to something a few pages back.

This section you have just read to the reporter in German is the German text of the Section 931 of the Civil Code which the witness referred to some few pages back in the deposition. I think it was just a mix-up.

(The reading from the deposition resumed):

"Q. You have just referred to—

"A. Is that the one you read? I think it conveys a wrong impression in the English, because this is only in the case of death, when the parties, the descendants, that have received something, in the case of inheritance, then they have to permit it to be accounted against them as some-
291 thing received already on account of death, to this extent.

"Q. And these last remarks that you have made were in connection with a reference to the last paragraph on the first page of Exhibit 5-B; were they not?

"A. If this is 5-B, yes.

"Q. That is.

"A. Yes.

"Q. And when you said that the English translation, in your opinion, is inadequate, you had particular reference to the words, 'And shall be accountable therefor'?

"A. Yes, I didn't get it clearly enough. If I just—Does it say in connection with what? I don't think it really gives the true—it doesn't really give the true meaning of this paragraph. It is almost impossible to translate without explaining what ausgleichspflicht is.

"Q. Will you explain for the record, what the legal implication is of the word ausgleichspflicht, appearing in the last paragraph of page one of Exhibit 5-B?

"A. Well, according to the law, descendants are obligated, in case they inherit, without a will being left, from their parents something, they have to permit every-
292 thing that they received beforehand, specified what —they have to consider as received on account of— in fact, it is added to the estate as it exists at that time; and then they divide the whole estate and deduct from the various shares what the individual descendant has already received in advance, which is accountable. And in this case, this would have been accountable as received in advance. In this case, it would have been added to the corpus of the whole gift, and would have to be deducted from the total at the end. But, in case the gift then would have been greater than the share that the descendant would have received as an heir, he is not obligated to return the surplus.

"Q. Let me see if your explanation accords with some analogy in the English or American law. Under American law, it is frequent for a parent, or a testator to give a gift to a child during his lifetime, and then to provide that, before the donee of the gift shall share in the donor's estate, there must be first charged to the donee the amount of the gift or the value of the gift before he can then share in the balance of the estate. Is that an analogy?

"A. It is an analogy, yes. As far as there is any analogy between the two systems, that is one.

"Q. And, as you explained, in the event that the
293 amount of the gift, or the value of the gift, exceeds the share which the donee would be entitled to out of the estate, he, nevertheless, is not required to return any excess to the estate?

"A. No; that is the law.

"Mr. Conner: I think that is all."

Mr. Burling: If your Honor please, back at page 206 of the record, where I was reading yesterday, an objection was made, or I was asked not to read a portion of our direct examination of the witness, and you said I should wait until cross-examination. Since my friends read the cross, I don't know what Your Honor's ruling is as to when we can require this portion to be read in this document offered in evidence.

The Court: They are the parties who are offering this deposition. Do you want to offer that?

Mr. Burling: As I understood the rules, when one party offers a part of the deposition, the other party may require additional parts to be read.

The Court: That is right.

Mr. Burling: I just want to do that.

The Court: Do you want to offer it now?

Mr. Burling: Yes, Your Honor.

The Court: I will permit it.

Mr. Gallagher: Is that the letter from Smith to Wronker-Flatow?

294 Mr. Burling: Yes, page 206.

Mr. Gallagher: Will you let me see it a few moments, first?

Mr. Burling: This is the document the plaintiffs have admitted was mailed and received in the regular course of business.

Mr. Gallagher: That is right.

Your Honor, for the Court's information, if it wants to read it, we have no objection. But as far as the record is concerned, we say it is clearly hearsay.

The Court: There has been a lot of hearsay in this. I have noticed it as we have gone along.

Mr. Burling: I don't ask to read it now, Your Honor, but to have it marked for the record.

The Court (to Mr. Gallagher): You do not object to it on the ground of hearsay?

Mr. Gallagher: If Your Honor wants to read it, we have no objection to Your Honor's reading it.

The Court: There has been so much hearsay in here, I suppose I will have to separate it in some way.

Mr. Gallagher: On the basis of hearsay, then, Your Honor, if I understand it, wishes me to express our position. As far as the rules of evidence are concerned, it is clearly hearsay and could not possibly be admitted.

The Court: If in the argument of the case you
295 think it is inadmissible, you just call my attention to it.

Mr. Gallagher: Yes, Your Honor.

The Court: I have noticed that in the reading of these depositions there is a great deal of hearsay. I suppose I will have to discriminate between what is hearsay and what is not, at the proper time. But it has all gone in without objection. So I will take this subject to your objection later on.

Mr. Burling: I understood at the outset Your Honor indicated you did not want to hear objections.

The Court: Yes, that is right.

Mr. Burling: We would have had a lot of objections under the old rules of evidence.

The Court: Yes; that is the ordinary procedure in a civil court. We don't take a great deal of time with that, unless it is way off, or highly objectionable.

Mr. Burling: Yes, sir.

The Court: All right.

(From the deposition, resumed):

"Q. I show you now a letter dated June 2, 1932, a copy of such a letter, which was addressed by the general counsel to Dr. Manfred Wronken-Flatow; and I would like to ask you to look at it, to read it, and see whether it refreshes

your recollection, whether you received this letter?

296 "A. That was in '32. I remember some, now that I read this letter, that I got some information from John Thomas on the things;"—

Mr. Burling: May I ask that it be noted that that should read "John Thomas Smith"?

Mr Gallagher: Surely.

Mr. Burling: Thank you.

(From the deposition, resumed):

"A. That was in '32. I remember some, now that I read this letter, that I got some information from John Thomas Smith on the things; but they were transactions where I was not involved in those forward and backward, that was backing out and making suggestions, that I probably would not have agreed to personally. It is telling the whole story.

"Q. But you recall having received this letter?

"A. I have a faint recollection that I did receive such a letter. You see, there were many things happened; I don't recall all of them."

Mr. Burling: I will ask to have this letter marked as Defendant's Exhibit 30. The original is in English, and there therefore is no German. And I offer it in evidence.

Mr. Gallagher: And there is no necessity to further state Mr. Connor's objection which was made at that point.

297 (The letter was accordingly marked and received in evidence as Defendant's Exhibit No. 30.)

Mr. Burling: I now go to the redirect examination, page 231—

"By Mr. Laufer:

"Q. Mr. Stansfield, I call your attention again to Plaintiff's Exhibit 4, the power of attorney.

"A. Yes.

"Q. Do you recall whether you drew up this power of attorney yourself?

"A. Most of the form of it was drawn up hundreds of years ago, I believe. Some of it, yes.

"Q. But you got up that statement, that power of attorney as it now appears, did you?

"A. Yes. Beg pardon, I got—

"Q. Did you get it up—I don't say drafted—you got it up?

"A. Yes. I haven't read it.

"Q. Please do, now.

"A. But I don't think anybody else was there to do it except myself.

"(Whereupon, the witness read the document.)

"The Witness: Yes, sir.

"By Mr. Laufer:

"Q. Now, would you say that, pursuant to its
298 terms, Mr. Fritz von Opel was authorized to demand transfer of the shares, or payment of their proceeds to himself?

"A. Not under this power, no.

"Q. But you did state, did you not, that this power of attorney was very much like the powers used in Germany, or elsewhere, to avoid—

"A. Yes.

"Q. —further complications?

"A. I think it should have had another sentence in there that is usual in German powers; but, unfortunately, apparently this was taken from an English form, and it wasn't added. That is the one thing that is missing. It should have been in there. But it did the main thing, that we got it out of General Motors at that time. Everything else could be handled afterwards with all the time available to do everything else.

"Q. Is it your recollection that the fact of the gift was never brought to the attention of General Motors' officials at that time?

"A. I would say, definitely not.

"Q. Do you recall when the fact of that gift did come to their attention?

"A. No. I don't remember. It didn't mean much, as far as I was concerned, whether it did later on or didn't, because it was all past history, when it did.

299 "Q. You testified before about the children and grandchildren of Adam von Opel.

"A. Yes.

"Q. At the time the sales transaction was made, who, of the Opel children, Adam Opel children, were alive at that time?

"A. Fritz Opel, Dr. Fritz Opel, and Wilhelm von Opel.

"Q. And no other brothers were alive?

"A. No.

"Q. And the place of the deceased brothers was taken by their descendants?

"A. That is correct.

"Q. And in due course, these descendants received the shares that their fathers would have received?

"A. That is correct.

"Q. Had they been alive?

"A. That is correct.

"Q. How many Adam Opel grandchildren were there at the time?

"A. Let me—I am under oath, and I will try to count them again. I counted them before, and I would ask Fritz to correct me if I make a mistake. I think Karl von Opel had four children, two boys and two girls. Heinrich von Opel had two daughters; and Wilhelm von Opel had

300 a boy and a girl; and I believe that is eight. Fritz Opel had no children; and Ludwig von Opel had no children, either.

"Q. The six grandchildren of Adam Opel who received their portion of the estate were the children of the two brothers who were deceased at the time of this transaction?

"A. Correct.

"Q. You testified that at the time of the gift, Elinor von Opel, the sistor of Fritz von Opel, was already married?

"A. That is right.

"Q. Do you recall how much she received from her parents at the time of her marriage?

"A. I don't recall that they ever told me; but I do recall that I was told that she did receive an endowment.

"Q. You do not know how much it was?

"A. I don't remember the figures; but she married a husband who had quite some money of his own.

"Mr. Laufer: That is all."

(Mr. Gallagher now reading the questions, Mr. Boland answers):

"Recross Examination

"By Mr. Connor:

"Q. Isn't it either a custom, or under some legal
301 sanction, that when a daughter marries, she is given a gift, a marriage gift by her parents?

"A. It is a very definite custom, when the parents have the means to do so, they they do; and quite considerable gifts, as a rule; a good part of their future inheritance. So I would believe that it was a very important part that she got.

"Q. You say that its amount is usually based upon its being a good part of their future inheritance; is that correct?

"A. Right.

"Q. Is that a rather universal custom or tradition among German people?

"A. Where there is anything—yes, I would say it is, very definitely. It is right in the law. It is regulated, a mitgift.

"Q. You say it is controlled by the law?

"A. It doesn't say how much you have to give as a mitgift. It has to be quite an amount that is within—what would be up to the standing of the family; that is, financially and otherwise.

"Q. Could you readily refer to your Code Book, Mr. Stansfield, and give us that provision in the German Code?

"A. I haven't seen this for some time, but maybe I
302 could.

"Q. Have you now found the provision of the German Code; and if you have, will you state for the record, giving the section number, and whatever other portions of the book are necessary, to identify that section?

"A. Would you call this the section sign?

"Q. Yes.

"A. It is all simple. Section 1620 of the Fourth Book of the German Civil Code; and I think that is all we have to say; and it is about the relations between parents and child, in general.

"Q. And will you now give us a translation of that section, Mr. Stansfield?

"A. The father is obligated to give his daughter, in case of her marriage, an endowment within the—it includes the standard of the—in ratio of his station in life, for the purpose of starting her own household, as far as he is in a position to do so, taking into consideration his other obligations and without endangering his own standard—you might say, standard of living; and provided, the daughter does not have capital of her own which is sufficient for the purpose.

"Mr. Connor: I wonder if we might stipulate at this—

point in the record that those portions of the German Code
to which reference has been made, be copied into
303 the record? I believe it is Sections 1620 and 931.

"The Witness: I haven't finished this. I think the next sentence, at least, should be translated. It is the same:

"The mother is under the same obligation, in case the father is not in a position to supply the endowment, or in case he has died.

"I think you should have that in.

"Mr. Connor: Yes, and I should like to suggest the stipulation for the record, to the effect that these two sections of the German Code, which have been referred to, Section 1620 and Section 931, be copied into the record, in the original German in order that we may tussle again, perhaps, with the question of their meaning.

"Mr. Laufer: It is so stipulated."

Mr. Gallagher (to the reporter): This is the end of his examination. I will give you this German to copy.

(The concluding portion referred to follows):

"S. 1620. Der Vater ist verpflichtet, einer Tochter im Falle ihrer Verheiratung zur Einrichtung des Haushalts eine angemessene Aussteuer zu gewaehren, soweit er bei Beruecksichtigung seiner sonstigen Verpflichtungen ohne Gefaehrdung seines standemaessigen Unterhalts dazu imstande ist und nicht die Tochter ein zur Beschaffung der
Aussteuer ausreichendes Vermoegen hat. Die gleiche
304 Verpflichtung trifft die Mutter, wenn der Vater zur
Gewaehrung der Aussteuer ausserstande oder wenn er gestorben ist.

"Die Vorchriften des S 1604 und des S 1607 Abs 2 finden entsprechende Anwendung.

"Mr. Connor: I think that is all."

Mr. Gallagher: Your Honor, I think that is all.

307–351 Thereupon,

DR. HEINRICH KRONSTEIN, called as witness on behalf of the plaintiff, and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Boland:

Q. Will you state your full name and profession, Doctor? A. My name is Heinrich Kronstein. I am professor of law, Georgetown University Law School. I am a member of the Bar of this Court.

Q. Would you state briefly your educational background? A. After elementary school in Gymansium—that means high school.

Mr. Burling: I think if we could save time, Your Honor—I myself have called Dr. Kronstein as an expert in German law, and I fully concede he is such an expert.

Mr. Boland: If Your Honor please. We would not agree to a statement of this man's qualifications. We think the Court should have the benefit of a statement of his qualifications.

352 Mr. Burling (to Mr. Boland): I was just trying to help you.

By Mr. Boland:

Q. Would you state briefly your educational background, Doctor? A. After elementary and Gymnasium, meaning high school and junior college, in Baden, Germany and after two and a half years in war service, in the First World War, I studied law at the University of Heidelberg, in Baden.

When I passed my first bar examination in the State of Baden, I passed through the three years of referendar time, which means an apprenticeship in the court.

Q. And what does that mean? A. That is, under the German system, the study of law is three years in the university, and then three and a half years, at least, in the State of Baden, of practical experience in the administrative agencies, the courtrooms, and the law offices.

Q. And when were you admitted to the practice of law, Doctor? A. 1924.

Q. And then? A. Then I went to Berlin and passed there my Doctor's examination at the University of Berlin, Doctor of Law.

Q. And after that? A. That was my legal education under civil law.

353

Then in 1936 I began to study common law in the Columbia Law School in New York.

Q. When did you first come to America, Doctor? A. December, 1935, and studied there until 1939, where I received the degree of L.L.D., and came to Georgetown and received the degree of S.J.D., and became professor of law in 1940.

Q. Have you had any experience, Doctor, in the field of actual practicing of law? A. Certainly.

Q. How long did you practice law, Doctor? A. I first, after my second bar exam, it was the practice in my home state, Baden, I was appointed Gerichts Assessor in charge of one of the sections of the Municipal Court of the City of Mannheim.

Q. Was this immediately after you passed your bar examination? A. Yes, sir.

Q. Was there any special significance to that appointment? A. In the State of Baden, it was a merit appointment.

Then I began to practice law in 1926, and practiced law in the City of Mannheim until November, 1935.

Q. At which time you came to America? A. Yes.

354 Q. And other than going to Columbia University Law School, Doctor, what have you done in the field of law in the United States? A. I was called as an expert of the Department of Justice since 1936, to 1940, or 1939. In 1939 I came to the Department of Justice on a per diem basis, since I was not a citizen at this time. I became an attorney in the Department of Justice in 1940, and was in the Department of Justice Anti-trust Division in the problems of international cartels and foreign law, until 1946.

Q. And when did you first come to Georgetown University Law School? A. I made my Doctor there, from 1939 to 1940, and became Professor then, first of comparative law, and full Professor since 1947; and teach corporation law, bankruptcy, and international private relations.

Q. Have you ever previously testified as an expert on German law? A. Yes.

Q. Doctor, would you explain briefly why you came to America in 1935? A. I left Germany first, because I am, to speak in the Nazi terminology, of the Jewish race; second, because I opposed Naziism.

355 Q. Doctor, I show you now Plaintiff's Exhibit 5 and ask whether or not you have had an opportunity previously to examine this document. A. I did, yes.

Q. What does this document purport to be? A. It purports to be a gift contract.

Q. And does it purport to be an executed gift contract? A. Yes, it purports to be executed.

Q. In using the words "gift contract," Doctor, do these have any special significance under German law? A. Yes. A gift contract is one of the contracts discussed and defined in the Civil Code, the Burgerliches Gesetzbuch.

Q. Would you spell that, Doctor, please? A. B-ü-r-g-e-r-l-i-c-h-e-s G-e-s-e-t-z-b-u-c-h.

Q. And is that what is commonly referred to as the German Code? A. Yes, that is the German Code.

Q. What is the significance of the German Code in German law? A. Germany is one of the so-called civil law countries. In 1896 the law was codified, the private law was codified, and overhauled. If you today study a question of private law, you look first to the Code. But you have to keep in mind that since 1896 the law developed,
356 and you have to consult the decisions of the courts, just as you do here.

In addition to that, you have to consult the commentaries and the textbooks, which have much more significance in Germany than they have here.

Q. Is the word "gift" defined in the German Code, Doctor? A. Yes, it is.

Q How is it defined? A. In Section 516 it is defined.

Q. And what is the definition? A. It says a gift is some delivery or some giving by which anyone enriches himself out of the gift of someone else, provided both parties agree that there shall be no consideration.

Q. So that, basically, a gift is defined as the transfer of property without consideration? Would that be a true statement? A. No; I don't like the words "transfer of property." A gift is a contract under German law. Under American law, a gift is a part of property law.

Under German law, a gift is a contract; and you find, if you look in the Code Section 516, you find it in the second part of the code. The first part of the Code contains the general rules, whether a person has legal capacity.

The second part of the Code has the personal
357 contractual relations, or tort relations—such as a claim I have against you, personal relations, which have nothing to do with any right in rem.

The third part deals with property law, personal and real, and all relations between a person and the goods, the real and personal property.

The fourth part is family law, and the fifth part is inheritance.

Q. Referring to a gift contract, Doctor, is it true that such a contract is without consideration— A. Yes, it is.

Q. —as we understand it in American law? A. German law does not know the concept of consideration. It is perfectly possible that a contract exists without consideration.

Q. Well, it is true that the promisee under a gift contract could sue for specific performance? A. Yes. I don't like the words "specific performance." That has too much of a technical meaning in American law.

Q. Could the promisee require performance? A. Yes—require and demand performance. If I make a contract, sales contract, or whatever contract I make, and the contract is not performed, I can sue in law for the performance.

Q. Even though it is a promise to give a gift? A.
358 Even though it is a promise to give a gift.

Q. Are there any special requirements for such a contract, under German law? A. Yes.

Q. What are they? A. The gift contract has to be in a solemn form, meaning in a form authenticated by a notary. But a notary shall not be compared with an American notary public. A notary, in the different parts of Germany, as position. In some states they are judges, people of judges' positions. In my home state, Baden, for instance, one of the notaries was appointed member of the Supreme Court of Germany. And in other states, you find distinguished lawyers of experience in the writing of documents, when they are over age, appointed notaries.

Q. What are the general purposes of a notary in Germany, Doctor? A. He has two principal purposes, at least in south Germany, where that, I believe, took place. He has one purpose he has everywhere in all Germany, to operate as a document officer, and to authenticate the document, or only to verify the signature.

His second purpose, in south Germany, is that he has many assignments such as you find here in the probate court.

Q. In the probate court? A. Yes.

359 Q. Assuming, therefore, a promisor to make a promise in respect of a gift to a promisee, then as I understand your testimony, it is that after that contract is notarized, the promisee can require performance under German law? A. Yes.

Q. Is there a distinction between that and American law in that respect? A. No doubt.

Q. That is the only distinction? A. The distinction is that, as far as I say, under the American law, a gift is no contract. Therefore the concept is different.

I am now teaching comparative law for eight years, and I learn I should never say that this, in the American law, is equal to this, in the German law, because it is finally generally not the case.

Q. You have testified, I believe, Doctor, that the promisee can require performance of the promisor on the gift contract, if notarized? A. Yes.

Q. Is that defined or set out in the German law? A. Yes; you will find two clear statements to the effect that the German Code—which is more a masterpiece in logic than in practical law, and is brought up in an entirely

360 logical line—you will find in the introduction to all types of contracts, such as sales or gifts, you find again some general rules.

And in this general rule you find right at the beginning of the general rule, in Section 241, on the basis of any obligatory relation, the creditor is entitled to demand that the debtor perform. That is one basis, so that the donee can ask for it.

But you find, furthermore, by indirect way, if you look, for instance, in Section 519, there it says the donor is entitled to refuse the performance of his promise, if by the performance he would endanger his standard of life.

This provision that he can refuse in a specific case certainly shows that as a rule he can ask for the performance of the gift.

Q. Now, Doctor, I believe your testimony thus far is to the effect that under German law two people can enter into a contract in respect of a gift, and that the promisee can sue the promisor for performance, if that contract is notarized. A. Yes, sir.

Q. Is that true? A. Yes, sir.

Q. Let us assume that the contract was not in fact notarized, is there any provision under German law
361 which would cure this formal requirement? A. Yes, there is.

Q. What is that, Doctor? A. In Section 518, Section 1, the statute provides that the notarial or judicial authorization of the gift is necessary; and then it says, in 518, Section 2, it says a deficiency of the form might be cured by the actual performance—or by, but, more literal, by actual delivery as promised.

Q. In other words, Doctor, if we were to make a contract in respect of this particular chair, and you agreed to give me the chair, as a gift, and we had words of promise on your behalf and acceptance on my behalf, and that were notarized, then I could require you to perform the contract? A. Yes.

Q. But if that were not notarized, I would have no right against you except that by your actual delivery of the chair to me, the gift would be completed and the contract good? Is that correct? A. By the act of delivery, the gift contract becomes valid. For instance, if you have a gift contract in written form or in oral form, which contains many provisions other than just the promise to give and to accept, the whole gift contract becomes valid as soon as the performance took place.

Q. Directing your attention now, Doctor, to Plain-
362 tiff's Exhibit 5, this document here—and that is an English translation, I believe, is it not? A. Yes. Could I have the German text?

Q. Yes. A. What is your question?

Q. I haven't asked a question yet, Doctor.

And directing your attention to page 1 of the Exhibit 5, would you point out and read to the Court in English first, whether or not there are words of promise.

Answer the question, first, whether or not there are words of promise; and, if so, read these words. A. Before I do that, I might say a word in regard to the relationship between promise and delivery.

The German law makes a very sharp distinction between what it calls Obligatorischer Vertrag. That is the contract by virtue of which personal obligations come into existence.

For example, I make a contract to buy a pair of shoes; I promise to pay $10. The shoe seller promises to sell the shoes. The German law makes a very sharp distinction between this contract, called Obligatorischer Vertrag, and the delivery of the shoes.

The delivery of the shoes, under German law, is independent from the contract itself. If, for instance, the delivery of the shoes again being considered a contract, I, as the seller, offer to you, the buyer, to transfer the prop-
363 erty and the title in these shoes to you, and you accept the title in the shoes, that is again a contract.

If you take a document such as this, you have to find out how much of this contract is of Obligatorischer Vertrag character, establishing relations in person, in personam, and how much it has to do with the so-called Dinglicher Vertrag.

Q. Do I understand you correctly, Doctor, that what you have just stated is basically that in each gift contract there are really two contracts, after it has been executed? A. After it has been executed, there are two contracts?

Q. And one is the— A. The so-called Obligatorischer Vertrag, and the other is the Dinglicher Vertrag.

The Obligatorischer is all the relations covered by the second book of the Civil Code—the contract of sale, the contract of gift, the contract of rent.

Then if the contract is made in which I promise to sell; the other fellow accepts; then the contract has to be made under the third book of the Civil Code, in which I transfer the title.

These two contracts are separate, to the extent that one of them might be void without making the other void. The Obligatorischer Vertrag might be void; the Dinglicher Vertrag remains valid.

There are other cases I can give you.

364 Q. Directing your attention, Doctor, to the first page of Plaintiff's Exhibit 5, in order to bring some of this testimony down to a practical basis, are there words of promise set forth in the October 5, 1931, draft, the Plaintiff's Exhibit 5? A. Yes.

Q. Would you read those words to the Court, please? A. In the second paragraph—

"In view of the premises I, with the consent of my wife, make a gift from our community property to my son Fritz von Opel of the shares owned by us and mentioned above of the Adam Opel Aktiengesellschaft in Ruesselsheim, Main, Nos. 1 to 600, having a par value of RM 6,000,000,00 (six million). These stocks are deposited at present with the bank."

That is the promise to transfer.

Q. That is the promise to transfer? A. Yes, the promise to make the gift.

Q. By the way, Doctor, would you direct your attention to the original of Plaintiff's Exhibit 5 and explain what the meaning of the German equivalent of community property is in Germany? Is it similar to our use of community

property in America? A. The German law on community property is one of the most complicated parts of the law.

But for the purposes of reading such a contract as
365 this, I think I can state it; that is simple.

Q. It has been stipulated by the counsel for the defendants that the property here in question was jointly owned by the mother and father. A. Yes.

Q. Still on page 1 of the gift agreement, Doctor, are there words of acceptance on behalf of the donee? A. Yes—"I, the undersigned Fritz von Opel, accept the gift."

Q. If I understand your testimony correctly, if they were notarized, Fritz von Opel, the donee under that gift agreement, could require performance from the donors, the father and the mother. Is that true? A. Yes, he could.

Q. Assuming it is a fact, Doctor, that this gift agreement was not actually notarized, are there any words on the first page of this contract which would cure the defect from the standpoint of this Dinglicher Vertrag to which you referred; and, if so, would you read the words? A. On the last paragraph of this page, I see the sentence:

"I, Wilhelm von Opel, herewith transfer title to these shares to our son Fritz von Opel by assigning to him our claim for the delivery of these shares to us."

366 Q. Is it your opinion that these words are words of actual conveyance, actual transfer, Doctor? A. Yes, certainly, they are.

Q. And what effect would they have, Doctor?

Mr. Burling: Just a moment, please.

I won't object more than once, Your Honor. I take it that it is understood that the Doctor's opinion is being asked on the basis of an assumption that this is a bona fide contract.

Mr. Boland: Oh, yes, yes.

The Witness: Here on the question whether there is or is not a sufficient transfer of property, we have to consult the third book of the B.G.B., where we find the chapter on the acquisition and loss of personal property.

There the general rule is established, in Section 929, that the transfer of title in personal property requires that the owner delivers possession to the person who acquires it, and that both parties agree that title is passed, that is, the Dinglicher Vertrag.

Now, that is the rule, the general rule, the usual rule, how the title in personal property passes.

But, in Section 931, there is a rule dealing with a case that the seller or the donor is not himself of the goods. He wished to transfer title. He can do so by assignment of his claim against the depository, to the donee
367 or to the the buyer. It reads:

"If the third person possesses the goods, the transfer might be substituted by an assignment of the owner to the other person required."

And by the assignment of what? By the assignment of the claim for the delivery of the goods.

Q. Would you now direct your attention and re-read those words of conveyance, Doctor, and read them aloud? A. (Reading): "I, Wilhelm von Opel, herewith transfer title to these shares to our son Fritz von Opel by assigning to him our claim for the delivery of these shares to us."

Q. And from what you have just read, from the German Code, it is your opinion, as I understand it, is it not, that actual title to the 600 shares of stock passed by words of conveyance set forth in the words you have just read? Is that true?

Mr. Burling: Again, on the same assumption that this is a bona fide agreement.

Mr. Boland: I think that is understood, Mr. Burling.

Mr. Burling: All right; I won't make it again.

Of course, I think it is understood that an expert witness cannot testify to an ultimate fact, is it not, Your Honor?, I mean, this witness has no knowledge of what happened on October 5, 1931.

The Court: As I understand, he is testifying on
368 the state of the law with regard an instrument on its face. That is what I understand.

Mr. Burling: Yes, Your Honor.

The Witness: This document purports to give two things:

Number one, the promise to give, and the acceptance to take; and

Number two, the full transfer of the title in the shares.

Mr. Boland: Let us get these assumptions of Mr. Burling clear, Your Honor. The assumptions I will concede are these, and only these: that Dr. Kronstein is testifying on the assumption that this is an actual contract which was entered into between Fritz von Opel, his mother, and father, on October 5, 1931. I grant no other assumptions.

Mr Burling: The assumption that the parties intended to contract as indicated by the paper.

Mr. Boland: I am having Dr. Kronstein testifying that this document, being an original, valid, gift agreement, testify to what the words mean under German law; and that is all.

By Mr. Boland:

Q. Now, is it your testimony that if this contract was actually entered into between Fritz von Opel and his mother and father, and if the only thing before you were page 1 on this agreement, that title passed to 600 shares of Opel stock? A. Yes, that is my opinion.

369 Q. Under German law? A. Under German law, the title passed.

Q. And title passed, as I understand you, even though this is an assignment of a claim against a third person, because under German law you may have the power to substitute a claim which you have against a third person in possession? Is that true? A. Yes.

Q. So that, getting back to the chair, Doctor, you have words of promise by the donor, the promise to give; and words of acceptance by the son, "I accept." That is the Obligatorischer Vertrag? A. Yes.

Q. And "Vertrag" means contract? A. Yes.

Q. Now, you have also read words of conveyance, words of transfer of title, in other words, of handing over the shares from one to the other? A. Yes.

Q. And those words are present? A. Yes.

Q. And that is what you call Dinglicher Vertrag, meaning contract? A. Yes.

370 Q. And all that is necessary for a Dinglicher Vertrag is an actual transfer or handing over, with the intent that the title pass? A. With the intent that title pass, and the acceptance of the intent.

Q. Right. So that it is the Dinglicher Vertrag, the actual transfer of title, which cures the effect of the lack of notarization, if that is a fact that this was not notarized? A. Yes, certainly.

Q. Now, Doctor, I direct your attention to the first paragraph on page 2, and would you read that aloud to the Court, please, from the English translation? A. (Reading): "The usufruct in the shares is not assigned to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the death of the survivor of them. However, 20 per cent of all dividends and interest received will accrue to Fritz von Opel."

Q. Would you give us your opinion, Doctor, whether that language would have any effect on the passage of

title, to which you have just indicated or testified to? A. Would you permit me to read the whole page again?

Q. Yes. A. To see whether there are—

371 Q. Certainly. A. No; that has no effect on the passing of title.

Q. Would you explain why you make that statement, Doctor? A. German law doesn't know the idea of equitable or legal interests in the same way the American and English law knows it.

If you transfer title in personal property or in real property, you can only transfer the whole title. You cannot transfer half of the title. You transfer the title, and the title passes.

Therefore I don't see how, if you take page 1 together with this section, how we can come to the conclusion that the effect of this contract is that something remains, as a matter of property law, in the hands of the parents. Title passed.

Q. Your testimony is, Doctor, is it not, that because of the language on page 1 of the gift agreement, the promise to give, the acceptance, and the actual transfer, that title passed? A. Yes.

Q. And that title passed absolutely and unqualifiedly? A. Up to this point, you gave to me up to now, it says nothing which could establish anything else but a complete transfer of title.

Q. Well, what I am trying to get to, Doctor, is that your testimony on German law is that if title passes,

372 title passes completely and absolutely. Is that right?

A. There are situations; for instance, I have a picture. I give you this picture, this specific picture, and we agree, in case of your death, this picture shall go back to me. That would be a possible condition. The title would pass to you, but it would be a condition of the return of this particular, specific picture to me after your death.

Therefore I hesitate to make such a broad statement as you suggest, because of this case I have in mind.

Q. Well, how broad is the German law? A. But title passes, but if title passes in this case, nothing remains in the donor of equitable or legal interest in the matter.

This one case which hinders me to say all the title passes absolutely, because you use the word "absolutely," because of this one case I mentioned.

But if we understand you have not in mind this condition which I here refer to, with this understanding, the title passed absolutely and fully, and gives complete power over this property to the donee.

Q. Getting back to the gift agreement, Doctor, therefore your testimony is, is it not, that title passed absolutely and unqualifiedly, as a result of the words on page 1, and that your reason why the first paragraph on page 2 does not in any way affect passage of the title is because
373. of the German law in cases such as this, where title passes; that in such cases, the title passes absolutely? A. Yes.

Q. Would you direct your attention to the next paragraph, Doctor, on page 2, and read that to the Court? A. (Reading): "If the parents Opel should predecease Fritz von Opel, the above described gift shall be considered as an advancement and shall be deducted from his share in such property as might be inherited by him or his sister, Mrs. Elinor Sachs, nee von Opel, or in case of her prior death, by her issue."

Q. And the next paragraph? A. (Reading): "For this purpose the value of the shares shall be fixed as the value at the time when the duty to account for the advancement arises."

Q. And the third portion of it? A. (Reading): "If this value is higher than the present value, the higher value shall apply, if it is lower, then the lower value."

Q. Do these paragraphs which you have just read, Doctor, in any way affect the passage of title? A. No, not at all.

Q. Would you read the next paragraph aloud, please? A. (Reading): "In the event that the parents Opel shall not have drawn in full or in part the income from
374 the shares accruing to them by virtue of their usufruct, the advancement to Fritz von Opel shall be deemed to have increased by the income not drawn and he shall be accountable therefor."

Q. Does this paragraph in any way affect the passage of title, Doctor? A. No, certainly not.

Q. Would you read the next paragraph aloud? A. (Reading): "If the shares should be sold or exchanged against other property the proceeds from such sale or the property taken in exchange shall be substituted for the shares, after the usufruct of the parents Opel has been safeguarded. All provisions stipulated above will then fully apply to such substituted property."

Q. Does this paragraph in any way affect the passage of title, Doctor? A. No.

Q. Would you read the next paragraph, on page 3? A. (Reading): "If Fritz von Opel predeceases his parents without leaving legitimate issue, the gift executed by this document will become void. The stocks or the property substituted therefore including the income accrued but not drawn will then revert to the parents Opel or the surviving parent."

Q. Does this paragraph in any affect the passage
375 of title, Doctor? A. This question cannot be answered either yes or no. I mentioned before that, for instance, in the case of a picture, a Rembrandt, which I gave to someone title, with the understanding that it shall go back if the donee dies, there the title would pass, but it would be a permissible condition of dissolutive character, a condition which might dissolve title in the case of death.

However, here, we don't deal with a specific picture. Here we deal with shares which can be exchanged, and the contract speaks of exchange into something else.

The German property law is very exact. This property cannot be clearly specified and defined, such an agreement, as we read here, has no effect on the passing of the title and does not establish a condition of the transfer, because at the time of the death the property might be mixed with a hundred other matters. And therefore I cannot see that this section has any effect on the passing of title.

Q. Therefore, in answer to my question as to whether this paragraph has any effect on the passage of title, your answer it what? A. No.

Q. Doctor, you will agree that all this language means something? A. Yes, certainly.

376 Q. This language starting at the top of page 2 and going through page 3? A. Certainly; every word has a very clear—I might say, not clear—a very obvious meaning.

Q. Well, let us start with, for example, what is the meaning of the first paragraph on page 2? A. (Reading): "The usufruct in the shares is not assigned to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the death of the survivor of them. However, 20 per cent of all dividends and interest received will accrue to Fritz von Opel."

With all proper deference to the man who drafted this contract, it is not a masterpiece of writing law. If you interpret a German contract, you do not just look on the word, and if you see the word "usufruct," you take the word and look in the index under "usufruct," and find that, and think that is what the parties did.

We have to apply two basic rules of interpretation. The first rule is that under German law, different from American, the objective statement of the parties governs.

If I say, "I transfer this ring to you," believing the ring is not just a Woolworth ring, but it is gold, the objective test, the objective words, have to be looked on. Under

Section 133 of the Civil Code, this objective test
377 has to be interpreted within the meaning of the intention of the parties, and the practice of life.

Q. So— A. And let me state one further rule of interpretation. The rule of interpretation is that the contract shall be so interpreted that the contract can be performed, and as much as possible of the words used in the contract can be given a meaning as much as possible and as close as possible to the intention of the parties.

Q. Directing your attention to paragraphs 2, 3, and 4, Doctor, would you explain— A. Paragraph 3?

Q. 2, 3, and 4 (indicating). A. Yes.

Q. And would you explain generally and briefly what these paragraphs mean, Doctor, under German law? A. These paragraphs are easily explained. Under Section 2050, that is, in the fifth book of the law on inheritance, it is provided that whenever a deceased has made gifts to the heirs, to one of the heirs, that this gift has to be reported.

Let me give a case, if you permit. A father has two children. He dies in December, 1948. His estate is one million dollars. He has given a gift two years ago, two years before, to the child B, a gift of two hundred thou-
378 sand dollars. Now, in the distribution of the estate, the child has to report this gift, if the deceased has required so in the gift, as he has done here.

If he reports—you take the estate of one million dollars, and add to this estate two hundred thousand dollars, and you have one million two hundred thousand dollars; and you divide that into two parts. And son A who had already two hundred thousand, which is four hundred thousand; and the other gets the six hundred. So there is, again, the one million.

So that is what this section means, and that is what here is requested, that Fritz von Opel, in case of the death of his parents, reports this amount in the distribution of the estate of the parents.

Q. Do I understand your interpretation or your reading of the German law provisions, Doctor, that unless the donor in a gift agreement or in a gift makes a specific provision for that type of accounting, that the example you just gave would not take effect?

In other words, it would not be accounted for unless specifically provided for in the gift itself? Is that true? A. In this type of gift, yes; specific provision is necessary. There are other types we do not have to deal with here, where it is not necessary.

379 Q. And, as a German lawyer, that is your understanding of the purpose of those paragraphs? A. Yes.

Q. Doctor, I think the example you gave was the example where we assume the child got an amount less than the amount of what his inheritance would be. A. Yes.

Q. Let us assume the child's gift was actually greater than what he would have gotten in the distribution after the death, what are the provisions in the German law in such a case? A. For instance, if what you mean, if I have my example—

The Court: Suppose in this case he had drawn six hundred thousand dollars, and there is a million left; what happens then?

The Witness: Then you make the same kind of arithmetic to find out how much he gets. But the statute expressly provides that the child who has received more than his share has nothing to return—an expressed provision of section—

The Court: That is the same thing the other witness said.

Mr. Boland: Yes, sir. But he wasn't testifying as an expert on German law.

By Mr. Boland:

380 Q. Therefore, as you read the provisions on page 2 of this gift agreement, under German law, in no set of circumstances, regardless of what the amount of this gift is, what relation that bears to the final, ultimate estate of Wilhelm von Opel, would Fritz von Opel be required to return any amounts of money for distribution? A. No. He would not be obliged to make any payments to the estate or to Mrs. Elinor Sachs, or to anyone else.

Q. So that these provisions are merely arithmetic calculations for the purposes of testamentary disposition, and only that, and do not in any shape, form, manner, or way create any claim against Fritz von Opel? Is that true? A. Yes, that is true.

Q. Directing your attention to the fifth paragraph on page 2, read that aloud, would you, for the benefit of the Court, and explain what that means? A. (Reading): "In the event that the parents Opel shall not have drawn in full or in part the income from the shares accruing to them by virtue of their usufruct, the advancement to Fritz von Opel shall be deemed to have increased by the income not drawn and he shall be accountable therefor."

Q. Can you give me any light on how that would be interpreted under German law, Doctor?

The Court: Don't you agree the word "not" should
381 be inserted in there?

The Witness: No; he should be accountable, because the idea seems to me that all of the Opel parents under this contract might have a claim for 80 per cent, if they only take 20 per cent a year, or take nothing. And then that is to be considered, in addition, a gift.

The Court: That is right. I understand that.

(To counsel): Didn't you agree the other day that the word "not" ought to be there in front of "be"?

Mr. Boland: No, sir.

Mr. Gallagher: There is no mistake or difference on the question of the language of this, Your Honor.

The Court (to Mr. Burling): Didn't you?

Mr. Burling: No, sir. I didn't think either side thought the word "not" should be in there.

The Court: Let me read it.

I see; I understand.

By Mr. Boland:

Q. And this, too, is in connection with the testamentary accounting; the use of the word "accountable" there? A. Yes, it is—for the same reason.

Q. And what relationship, or how would that particular paragraph affect the rights of the donee under this contract? A. The rights of donee?

Q. Yes. Does that create a right of any sort,
382 nature, or kind, against the donee? A. No, certainly not.

Q. I direct your attention to the next paragraph.

The Court: Gentlemen, I think that is a rather important paragraph, and I believe I will have to stop at this point. You will probably take some little time on this, will you not?

Mr Boland: Yes, Your Honor; we are coming to a rather lengthy one.

The Court: This next one will probably be the controlling one, won't it?

Mr. Boland: No; that will be with respect to the first paragraph on page 2, Your Honor.

The Court: All right. It certainly seems to me that it is very important.

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DR. HEINRICH KRONSTEIN resumed the stand and was examined and testified further as follows:

Direct Examination. (Continued)

By Mr. Boland:

Q. Dr. Kronstein, as we adjourned on Friday, I believe you had testified, in respect of Exhibit 5, the gift
387 agreement dated October 5, 1931, that the language on page 1 of this exhibit set forth a promise to give, on behalf of the father and mother von Opel, and an acceptance of that promise by the son; and, on the assumption that that was not notarized, that, as I understood your testimony, was not an enforceable obligation, those two things constituting what is known as an Obligatorischer Vertrag.

You further testified that at the bottom of the page were words of actual conveyance of title, which you referred to as the Dinglicher Vertrag. Is that right? A. Yes.

Q. You further testified that under German law, the transfer of title through the Dinglicher Vertrag cured the lack of notarization in the Obligatorischer Vertrag. Is that right? A. Yes.

Q. And I believe that you testified that the title absolutely passed as a result of the language on page 1 of that exhibit. Is that right? A. Yes.

Q. Then we went on page 2 and described very generally the language in the first paragraph of page 2, that is, in connection with the reservation of certain rights on behalf of the donor. Is that right? A. Yes.

388 Q. And we had gotten through the testamentary accounting provisions in paragraphs 2, 3, and 4, on page 2 of the English translation. Is that right? A. Yes.

Q. And I believe that the fifth paragraph on page 2 is the place at which we adjourned. You had not gone into that particular paragraph. Is that true? A. Yes.

Q. Would you read aloud, Doctor, the fifth paragraph on page 2? A. (Reading): "In the event that the parents Opel shall not have drawn in full or in part the income from the shares accruing to them by virtue of their usufruct, the advancement to Fritz von Opel shall be deemed to have increased by the income not drawn and he shall be accountable therefor."

Q. So that paragraph, Doctor, related to the first paragraph on page 2? A. Yes.

Q. Would you prefer to discuss that paragraph in connection with the first paragraph on page 2? A. Yes; it cannot be explained otherwise.

Mr. Boland: Your Honor, it is our belief that the Court will have a clearer presentation of the problems involved in this particular contract if we discuss this paragraph with the first paragraph on page 2. So, with Your Honor's permission, we will skip that paragraph and go on to the next paragraph on page 2.

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By Mr. Boland:

Q. Will you read that, Doctor? A. (Reading): "If the shares should be sold or exchanged against other property the proceeds from such sale or the property taken in exchange shall be substituted for the shares, after the usufruct of the parents Opel has been safeguarded. All provisions stipulated above will then fully apply to such substituted property."

Q. Would you explain the significance of that paragraph under German law, Doctor? A. I think that this paragraph, too, cannot be explained and discussed without going into the first paragraph on page 2.

Q. So that when we return to the first paragraph on

page 2 we will also consider the fifth and sixth paragraphs? Is that true? A. Yes, sir.

Q. Would you read the first paragraph on page 3, Doctor? A. (Reading): "If Fritz von Opel predeceases his parents without leaving legitimate issue, the gift executed by this document will become void. The stocks or
390 the property substituted therefore including the income accrued but not drawn will then revert to the parents Opel or the surviving parent."

Q. Would you explain briefly what is contemplated by such a paragraph, under the German law? A. I already, on Friday, answered your question, whether this section has an effect on the transfer of title.

Q. You stated that it did not? A. That it has not. And I discussed that more in full, and it will become clearer as our discussion proceeds. But this section, too, cannot be separated altogether from the first section on page 2. It has to be seen altogether at one time.

Q. Would you repeat what you said on Friday, for the benefit of the Court, as to what your interpretation of that paragraph was? A. I said that there are cases in which the transfer of property, personal property, can be under a condition. For instance, I give a Rembrandt picture to my friend, with the understanding that the property falls back to me if this friend dies.

There it is perfectly clear that here is one specific piece of property; and, if he dies, the condition occurs and the property goes back.

In this case, however, especially after we have
391 discussed the usufruct idea, we will not end the discussion before we come to what shall be a substitution of property. Mr. Fritz von Opel, if this usufruct did not hinder him—and it didn't—to sell the shares and to buy other shares or buy houses, or pictures, or have a good living on it, then it is absolutely impossible, at the moment of his death without legitimate issue, to find out the specific piece of property on which this depends.

Therefore we cannot compare the case of the picture, with this case; and therefore this provision has not the meaning to establish a conditional transfer of title. It is something else.

Q. Does the preceding paragraph give you a clew upon which you base your conclusions? A. The preceding paragraph, again, only in connection with our discussion of the usufruct, because I cannot separate the question of the power of Fritz von Opel to sell and exchange again to other properties, from such sale of the property taken in exchange that may be substituted, after the usufruct of the parents von Opel has been safeguarded, I cannot separate that from the usufruct.

Therefore, all that I can say at this moment is that this provision, as this contract is written, does not establish a conditional transfer of title; it doesn't affect the transfer of title. The way it is written, it permits only other
392 explanation, and I think I can present explanation, as you say.

Q. All right, Doctor. Now, before we return to the explanation of the first paragraph on page 2, there is one question I would like to ask you about the transfer of title to the 600 Opel shares.

When we discussed page 1 on Friday, you testified that under German law a substitution of an assignment of claim against a third person in possession would permit the actual transfer of title, did you not? A. Yes, I did.

Q. At that time, I do not believe that I gave you the assumption of a fact that if these shares were physically located in New York, would that make any difference, under German law? A. It depends why they were situated in New York. If they were situated in New York on the basis of a contract between the Opel parents, or Wilhelm von Opel, with a New York bank, then certainly we would have to consider under which law this assignment, by Wilhelm von Opel to Fritz von Opel, takes place.

Q. Well, assume, Doctor, for our purposes, that the shares of stock are located in a bank in New York, and that the parents fail title in respect of this through a claim against the bank.

393 As I understand your testimony, you stated that under German law, an assignment against a person in possession, a third person in possession, may be substituted for the shares themselves, and title will pass. A. Yes.

Q. And the only question I am asking you is whether it makes any difference whether those shares are in New York or in Germany, under German law. A. It makes a difference, under German law, whether the shares deposited in New York were deposited under a contract governed by New York law. Suppose a contract between the bank, the National City Bank or the Guaranty Trust Bank, in New York, and the Opel parents, was governed by New York law, then the assignment would have to be valid under New York law, because the German conflict of law would look to New York law for the problem whether this assignment is good.

But if the assignment is good, then the title in the shares would pass with the transfer.

Q. Assuming that the assignment of the shares was valid, then, as I understand you, under the German law, the title would pass? A. Exactly.

Q. Directing your attention now, Doctor, to this first paragraph on page 2, you have testified generally on Friday that this is to be reserved rights on behalf of

394 the donors. Would you explain in more particularity as to what you had in mind in interpreting this contract as to just what rights are reserved to the donors? A. You have to permit me—I began yesterday to say a few words about the interpretation of German contracts and the rules of interpretation.

Q. What are those rules? A. Because if you take this language in itself, it looks like a pretty sloppy way of drafting; and we have to interpret it under the following test:

First, the objective statement; what does he state?

Second, we have to put it together with the other sections in the contract.

And then we have to look at the intention of the parties.

I told you before that under German law, one possibility is excluded, that this section interferes with the transfer of title.

Another possibility is excluded, that this section established a right in rem of the Opel parents.

Q. Doctor, what do you mean by a right in rem?

Mr. Burling: I object to the question, if Your Honor please. I know Your Honor is operating under the equity rules, and it tends to let everything in. I wish to save an objection for the record at this point, however, that this plaintiff is estopped, fundamentally estopped, to assert there was no usufruct, because this plaintiff has asserted in the United States District Court for the Southern District of New York, under oath of Wronker-Flatow and Fritz von Opel, that the usufruct was validly created and Fritz von Opel in 1935 had acquired legal title. I wish to save the point of estoppel for the record.

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The Court: All right.

Mr. Boland: Your Honor, we most forcefully disagree with the position of the defendants on that; but we will take the issue up when they establish their point, if they do.

By Mr. Boland:

Q. Would you explain what is meant by a right in rem under the German law, Doctor? A. A right in rem is the opposite to a right in personam. If we take the Civil Code

again and look in the second and third parts, the second part speaking of the relationship between persons, such as a sales contract, a buyer and a seller make a contract of sale; this contract does not establish any right in rem, legal or equitable, none at all. It established a claim of the buyer against the seller to enter into with him a conveyance contract.

Q. For the conveyance contract, you have to look into the third part of the book. The third part of the book established all the rights in rem which exist. And there the
—— German law is very definite; there are only a
396 limited number of rights in rem in existence. It is absolutely clarified how they are established. No interpretation is possible, by mere judicial or legal or any other interpretation, to bring any of these rights in existence.

The general right is property right. I own the chair. But I have a right in rem in this chair.

I have a mortgage on real property. I can take out of the real property, by the means of foreclosure, the money I need. That is the relationship between money in the property.

It must be contrasted with the right in personam. I give a loan to X, and I have a claim against him to pay back. This might be evidenced by a mortgage, when I have a claim against X; and when he doesn't pay, I can exercise my right in rem to take the money out of the property.

So this distinction between right in personam, a claim against someone, for an action, the payment of money or any action, because the German law, as mentioned before, has specific performance as a rule; that is one thing. And an entirely different thing is the right of a person in something, a property right, a mortgage right, a pledge right, and so forth.

Q. Doctor, you say it is clear that this does not establish

a right in rem? A. Yes.

397 Q. If it doesn't establish a right in rem, how do you interpret this language? A. Since it dosn't establish a right in rem, it can only establish a personal claim, a personal claim of the Opel parents against the son, for certain action.

Now, if you will permit me to look again in the chapter on gift contracts, the chapter provides—

Q. This is a chapter of the German Code? A. Of the German Civil Code—it provides, in Chapter 525, that you might make a gift under an impost; and if you do so, the donor acquires personal claim against the donee for the performance of the charge.

Q. But a charge, under German law, does not in any way affect the passage of title? A. A charge or impost, under German law, neither interferes with the transfer of title nor establishes it in any way as a right in rem.

Q. Are you using the words "charge" and "impost" interchangeably, Doctor? A. Yes.

Q. So that your interpretation of the first paragraph on page 2 is that it creates a personal claim, an in personam claim on behalf of the donors against the donee? A. It is a charge—and I might, if you will permit me, refer to a court decision. It is a decision of the highest tax

398 court in Germany, the Reichsfinanzhof, a decision of April 7, 1925, in Volume 16, page 97. There a gift contract is made, and a Niessbrauch—I don't like very much the word "usufruct", because it is not a translation—a Niessbrauch is provided for in the contract.

The court says this Niessbrauch cannot come into existence without an act of reconveyance by the donee to the donor. And then it says that what it actually is—and I will translate it in a minute—

"Unter diesen Umstaenden kann aber die vorbehaltene Bestellung des Niessbrauchs nichts anderes darstellen alseine Auflage im Sinne des Sec. 525, BGB."

"Under this condition, the reserve establishment of the Niessbrauch can mean nothing else but a charge in the meaning of Section 525, B.G.B."

I follow exactly this approach of the court.

Q. Well, Doctor, if you state that the interpretation of this paragraph, the first paragraph on page 2, is merely an in personam claim, a claim of donors against donee, my question to you is what kind of rights are reserved? What are the particularities of the rights that are reserved to the donors, in respect of the language of this passage?

399 Mr. Burling: I object to the question unless counsel states to the witness that he is asking on the assumption of fact which the witness of course knows nothing about, that there was here no reconversion, no delivery back to the donor.

Mr. Boland: Reconveyance?

Mr. Burling: Yes, reconveyance.

Mr. Boland: I will be glad to make that assumption, Your Honor, that there was in fact no reconveyance into joint possession of the donor and donee.

Mr. Burling: And then I object on the estoppel point, on which Fritz von Opel swore to the Southern District Court of New York—

Mr. Boland: Your Honor, he has already made that objection.

The Court: Yes. I will hear you on that later.

By Mr. Boland:

Q. On the assumption, Doctor, there has not been an actual reconveyance into joint possession, and considering that as an assumption herein, would you describe in particularity the types or rights that are reserved, these so-called in personam rights reserved to the donor, in such language as we have in the first paragraph on page 2? A. I see three possible ways of interpretation. The one is that

this agreement gives the Opel parents a contractual claim for payment of a certain percentage of the income
400 which Mr. Fritz von Opel made out of this property.

Q. Would you explain, using the language of that paragraph, exactly how that claim would work? A. If I take this paragraph in itself, without looking to the paragraph 5; if I take this paragraph in itself, then the interpretation would be that the Opel parents have a right to tell the son, "We give you this gift, and you give us your income out of this property which we have given to you"—as a matter of personal claim.

And the word "usufruct" in German practice is not at all used in the way it is used in the third part of the B.G.B. as the right in rem.

It is very often in the literature used—let me give the German word—Zur Sicherstellung Niessbrauch, meaning a Niessbrauch for merely consentual relations—that the father in this case, or the parents, would be entitled to write a letter to the son, "Now the year is over, and you give us what you made out of this money"—that is, if I interpret this section in itself, without looking on anything else.

Q. So that in interpreting this section, the first paragraph on page 2, in and of itself, it would come down to the question what was intended was a personal right on behalf of the donors to claim 80 per cent, in effect, of the income
401 from the corpus of the gift? A. The first section doesn't speak at all of the 80 per cent. It just speaks of "The usufruct in the shares is not assigned to Fritz von Opel." I only speak of that—the 80 per cent, yes, it would be, since 20 per cent would go to Fritz von Opel. So that it would be a claim for 80 per cent. That is one possible interpretation.

Q. Now, looking at the gift as a whole, Doctor, and taking into consideration the language of the other paragraphs, following this paragraph, what other possible interpretations are available? A. We have here, in the fifth—

"In the event that the parents Opel shall not have drawn in full or in part the income from the shares accruing to them by virtue of their usufruct, the advancement to Fritz von Opel shall be deemed to have increased by the income not drawn and he shall be accountable therefor."

If somebody helps us to this extent, that if my first interpretation is correct, and that the parties establish a personal claim for the payment of the 80 per cent, then it would mean, taking these two sections together, that Fritz von Opel would not be obliged to make payments to the parents, unless specific demand is made by the parents for payment.

If the parents do not make any specific demand,
402 then Fritz has no obligation, and the money is to be added to the capital.

So that, using this language, your interpretation—the additional language of the give-agreement—how does that change the first possibility which you gave, Doctor, of an in personam claim? A. It doesn't change it. It only clarifies it to this extent, that Fritz von Opel would be under no obligation to give an income out of this gift, to his parents. He would be only obliged to do so if a demand is made. Otherwise the word "drawn"—"shall not have drawn in full or in part"—would not be sufficiently explained.

Q. Directing your attention, Doctor, to the remaining language on page 2 and the top of page 3, are you given any further clews as to a possible interpretation as to what the donors, the parties to this gift agreement, meant, in using the language in the first paragraph in page 2? A. Certainly, what I mentioned before, I don't find in this language any act of reconveyance giving the Opel parents any possession. Therefore I exclude any possibility of a right in rem.

Q. I understand that, Doctor, but thus far in looking to the affirmative side of your testimony as to what you do interpret the parties might have meant, you testified they

might have meant a personal claim against the donee
403 for 80 per cent of the income.

Are there any other interpretations of this language, using your objective test as required under German law? A. Yes, there are. It might be interpreted in this way:

Since the word "Niessbrauch" is used as a technical word in the third part of the Code, it might be that the Opel parents were given a personal claim against the son to establish a right in rem at any time they desire to do so. That is a possible interpretation.

So, then, if that is the case, the Opel parents would have no claim against Fritz von Opel for payment of anything.

But they would be entitled, at any time, to tell Fritz von Opel, "We wish that now a right in rem is established."

That means that the properties given in joint possession of the Opel parents and Fritz von Opel, and then the Opel parents take out of the money whatever they wish, up to 80 per cent.

As long as this claim for the establishment of this right in rem is not made, the Opel parents would have no right to get the money. But they would be entitled, at any time, at any minute, to say, "Now we wish the establishment of the right in rem."

Q. So that up to this point, Doctor, we have two possible interpretations, as I understand your testimony. One
404 is that the parents reserve to themselves merely a personal right against the donee, to call upon the donee for 80 per cent of the income from the corpus of the gift, purely as an in personam claim between two parties.

And the second possibility is that the parties might well have intended to have a personal claim on behalf of the donors against the donee, to call upon the donee at some future time to establish a right in rem, to call upon him to reconvey the property into the joint possession of the donee and donors, at which time the donors would then have

a property right in the property, the corpus of the gift, in order to enable them to directly draw the income from the gift itself.

Is that true? A. Yes.

Q. Are there any other possible interpretations? A. Yes; I see a third possibility, that these two first possibilities are to be combined; that the parents had a claim for 80 per cent, if they wished to have 80 per cent, or for 20 per cent, or for nothing, whatever they decide to have, against Fritz von Opel; and that in addition to that, they could, for purposes of security, say:

"Dear Son: Now we wish to have security for our claim, and this security is that you will now establish a right in rem.";

405 So that is a combination between these two possibilities. I believe that all three possibilities, on this language, merely the objective test, the three possibilities exist.

Q. So that bringing the three possibilities into partial focus, the first is the personal claim of the donors against the donee to call upon the donee for 80 per cent of the income. That is right, isn't it? A. Yes.

Q. And the second is a personal claim of the donors against the donee to call upon him to establish a right in rem? A. Yes.

Q. To establish the usufruct? A. Yes.

Q. And the third, being a combination of the first and the second, in other words, a personal claim on behalf of the mother and father von Opel, against the son, to call upon him for 80 per cent of the income? A. Yes.

Q. And they would have the additional right, which is a personal claim too, to call upon him at any time in the future to secure the first right, the 80 per cent of the income? A. Yes.

Q. They could call upon him to set up a usufruct
406 in order to secure that personal claim? A. Yes.

Q. At which time they would then have a direct property right in order to take the income themselves? A. They would have a combined right; they would have a right in personam, protected by and secured by a right in rem, as you have in a mortgage—exactly the same thing.

Q. And you say that the possibility of the parties intending to establish an immediate right in rem, that the parties intended at the time of the gift agreement to establish a right in rem, is not within the realm of interpretation? Is that the way I gather your testimony? A. I cannot testify as to intention. I can only testify as to what this piece of paper says.

Q. That is right, using the objective test on this piece of paper, and you say that that possibility is not within the realm of interpretation? Is that right? A. As this piece of paper it written, there is absolutely no possibility to interpret this piece of paper as the establishment of a right in rem.

Q. Why are you so sure in that statement, Doctor? A. You can interpret in German law very much in contractual relations. But you never can interpret conveyance, an act of conveyance, into a contract, especially in a case in which no possession, none whatsoever, was retained by the
407 donors.

Let me again refer to this, I would say, in the German law, that is absolutely elementary, that there cannot be a right in rem without possession or without an act of conveyance.

Now, again, in this case the Court says, where the gift was made, as I said, and a Niessbrauch was reserved, it says—and there is some real property involved—

"The gift of real property, under the reservation of Niessbrauch, can only be executed by, first, transferring the title to the donee, and then letting the donee establish the reserve Niessbrauch on behalf of the donor."

Q. In coming to the definite conclusion, using the gift agreement itself, that no immediate right in rem was established, have you used as a basis or at least as a partial basis for your conclusion the lack of any condition of reconveyance in the gift, Doctor? A. Certainly. It says no word of reconveyance. There is no word providing for joint possession. It is just saying that it is an assignment of the claim of the Opel parents to Fritz von Opel.

By this act, title passed; and, without anything more, no Niessbrauch or right in rem at any time can come into existence. All that can come into existence is, under
408 Section 525 of the Code, personal claims of different kinds.

Q. Assuming, Doctor, that a German attorney was present at the time of this gift agreement, and assuming that German attorneys prepared drafts and prepared this gift agreement, would that aid you in your conclusion that an immediate right in rem was not intended? A. Certainly. I think it is unbelievable to me that a German attorney doesn't know that. It might happen often that people who are really great business lawyers, forget about the basic rules on property law. But that is a basic rule of property law we are dealing with here, and if a German lawyer was present, there is no doubt that this contract expresses intentions which means no right in rem for the Opel parents.

Q. Doctor, you have practiced in Germany for quite some time; would you explain to the Court what language could be inserted in this gift agreement in order to establish an immediate right in rem. A. All that would have to be done is to add one part, in which you say:

"I, Fritz von Opel, herewith reassign—or assign—my claim against the depository of shares in New York to the Opel parents, with the understanding that it shall be a joint claim of the Opel parents and myself."

409 And by this act Fritz von Opel would have to take out the shares under the name of the three; it would

have been provided that he had to take these shares and put them in New York into a bank under the name of Fritz von Opel, Wilhelm von Opel, and Marta von Opel; or he could give it to the bank to keep it there, with instructions to keep it under the name of the three, and pay out exactly as it provided here. That is all that is necessary.

Q. So that if the parties had intended the establishment of the immediate right in rem, it would have been a very simple thing, under German law? A. Very simple.

Q. And it could have been done under this instrument itself? A. It could have been done, if the assignment was not made just as an outright assignment, but with the idea that it is reassigned to all three, it was already clearly an established right in rem.

Q. And, and the important thing in establishing an immediate right in rem is the joint possession, Doctor? A. The German law—let me say that—in regard to personal property, and in some extent in regard to real property, is based on the idea that there cannot be a right in rem without possession. Even if you had even a limited right in rem, you have to have possession yourself, or you
410 have to give the possession to a depository, or where you otherwise have the right to dispose of it, to give it to the other fellow.

But without possession and without any direct right to take possession, there is no right in rem possible, by very definition.

Q. All right, Doctor; I believe we understand your testimony, and particularly the three possibilities, the three possible interpretations which you have given.

You have indicated before in your testimony that you would explain the meaning of the fifth paragraph on page 2 after you had had an opportunity of explaining the first paragraph. Would you now explain, in the light of your testimony, how you interpret the fifth paragraph on page 2? A. Yes. If you take my first possibility in regards

to the first paragraph on page 2, you have to interpret the Section 5 this way:

First, that the Opel parents can make a claim against the son; but without making a demand, no obligation on the side of the son can exist.

If my second possibility of interpretation prevails, then the Opel parents were free to take out of the property up to 80 per cent, but they were not bound to do so.

Q. That is, after demand was made and the
411 usufruct established? A. Yes.

And on the first possibility, where the right in rem is only established to secure the claim, certainly the same theory followed that I have in the first possibility, if the Opel parents demand, and the son doesn't pay, then the Opel parents might make him pay it out of the right in rem. If they don't claim, the money is added to the capital.

And in the case of death of the Opel parents, and in case of distribution of the estate, the whole gift, plus the money not called on by the parents, is to be accounted for in the distribution of the estate, as discussed on Friday.

Q. Under your interpretation of this paragraph, Doctor, until a demand is made, under the first possibility, there is no establishment of a right in rem; it is merely a personal claim? A. Yes.

Q. For 80 per cent of the income? A. Yes.

Q. Until a claim is made, for 80 per cent of the income, is the donee free to do with the corpus and the income as he will? A. He has full power to do with the property what he wants, because it is his property. His obligations in regard to the property are purely personal obligations to the Opel parents.

412 Q. In the second possibility, which is merely the personal right to call upon the donee to establish the right in rem, upon demand of the donor, until such demand is made, would you explain the ownership rights of the donee, Fritz von Opel? A. Until such demands are made, Fritz von Opel is the free owner.

Q. So you would interpret— A. And even if there are claims in regard to number one, then there is a personal claim; and as long as no judgment is taken, there is no right in rem in existence.

Q. I understand that, Doctor. But I am now on the second possibility, where the only right is that the donor has reserved to himself the right to call upon the donee to establish a right in rem in favor of the donors. A. Yes.

Q. Until demand is made, is the donee free to do with the property as he will, both corpus and income? A. Yes.

Q. And, under this possibility, your interpretation of the fifth paragraph on page 2 is that until demand is made, the uncalled for portion of the 80 per cent income will be added to the capital only after demand is made? Is that right? A. It will be added to the capital if no demand is made?

413 After demand has been made to establish the usufruct. A. Ah, yes.

Q. And until demand is made to establish the usufruct, this paragraph does not apply to the gift? Is that right? A. I have to ask you to repeat the question. I am not clear about that.

Q. Under the second possibility, as I understand your testimony, the donors, the parents von Opel, reserved unto themselves the right to call upon Fritz, the donee, to set up a usufruct, at which time they would have a right in rem for 80 per cent of the income. Is that right? A. The right in rem for 80 per cent of the income, that is not entirely clearly expressed, because a right in rem means if once the right in rem is established, the income goes to the parents.

Therefore, if the right in rem is established, it is up to the parents to take out of the income coming to them as much as they want. And this here provides that if they don't take, if they don't exercise their power, then it is to be added to the capital.

Q. That is exactly my point. Suppose no demand is made by the parents against Fritz to set up a usufruct, then the

provisions of this paragraph would not apply, until
414 the demand is made? Is that right? A. Until—we are working with the second possibility—

Q. That is right. A. Certainly this has no meaning until the Opel parents put themselves in the position in which they can get any of the profits. And they can get any of the profits, as the second possibility, only if the right in rem is established.

Q. So that until the demand is made, the right under the second possibility does not apply? A. Exactly.

Q. Would you go to the further paragraph, please, Doctor? A. (Reading): "If the shares should be sold or exchanged against other property the proceeds from such sale or the property taken in exchange shall be substituted for the shares, after the usufruct of the parents Opel has been safeguarded. All provisions stipulated above will then fully apply to such substituted property."

Q. What does this paragraph mean? A. Could I see the German text?

Q. I have it (handing to witness). A. It is exhibit—

Q. 5—5-A. A. Yes. What is your question?

415 Q. What does this paragraph mean? A. This paragraph means, in regard to the second possibility, that the Opel parents can claim the establishment of a right in rem not only in the original Opel shares; but if Fritz von Opel has sold the shares and has other property now, out of these shares, that this right in rem is to be established in this new property of Fritz von Opel.

So it indicates that the parties had in mind that Fritz was free to dispose of the property. Furthermore, there is one word in the German especially—

Mr. Burling: I object to it, if the Court please. It has been stipulated—and it is hard enough to deal with this very intricate matter of foreign law in the one language—and it has been stipulated by counsel for both sides that the translations of all these documents are correct.

The Witness: Let me say a word to that. Between correct translations and translations for all purposes, in the technical meaning we use by a lawyer, it is difficult; there are words which have just a flavor, under the law, which you cannot translate.

I don't object against the word "safeguarded" at all. But I have to work out the word "Sicherheit". I have to refer to this word.

Mr. Burling: May I be heard further, Your Honor?

416 This witness is not coming newly to this case. He went to Germany, for example, to assist in the deposition of Wilhelm von Opel and others, which were read. And long before the stipulation was entered into that this document was correct, Dr. Kronstein was fully familiar with the document and hundreds of pages of testimony were taken concerning it.

The Court (to the witness): I understand you to say there are some English words which do not indicate the full import of the German words, notwithstanding the translation. I think you would have a right to take that into account.

The Witness: The word "Sicherstellung", this word, which has a very specific meaning in German law—or "Sicherheit" is used in connection with my first possibility. You use this word if you are perfectly clear about the fact that no right in rem exists. But that whenever you wish to acquire protection, security, and, for instance, a mortgage is exactly that—"Sicherstellung".

Therefore I wish to refer to this word which was used, which was a certain indication of the test, of this objective test, what that all means; that it means a possibility that the parents as against the son, and if the son didn't say, or if the parents wished to have other protection, they could ask for a right in rem, if they wanted it.

By Mr. Boland:

Q. Would you direct your attention, Doctor, now to
417 the first paragraph on page 3. I believe you indicated you were going to withhold your explanation of that until after you have covered the usufruct paragraph? A. Yes.

Q. Would you explain what that means, in the light of your previous testimony?

The Court: Excuse me just a minute, before you go to that.

In regard to this paragraph, the fifth on page 2, do I understand you say, under the German law, if the parents of Fritz von Opel had wished to assert this right in rem against the exchanged property, that this property he bought out of the proceeds of the sale of the other, they might have done so at any time?

The Witness: At any time.

The Court: They might do so even now? His mother might do so even now?

The Witness: Suppose nothing happens, I don't know what happens between this document and today. But if nothing happens between this document and today, then this right exists.

The Court: Well, now, is that a legal right?

The Witness: A personam is not in the property.

The Court: I understand. It is a legal right that would be asserted in the courts.

418 The Witness: Yes.

The Court: Upon a demand.

The Witness: Yes.

The Court: I see. Go on.

Mr. Boland: Your Honor, in order to clear up any problem you might have in your mind at this time, we intend to establish as a fact that any rights reserved to the donors under this gift agreement were in fact waived, and we intend to establish that the waiver was valid.

The Court: All right.

By Mr. Boland:

Q. You were reading, I believe, from the first paragraph on page 3. A. Yes—

"If Fritz von Opel predeceases his parents without leaving legitimate issue, the gift executed by this document will become void. The stocks or the property substituted therefor including the income accrued but not drawn will then revert to the parents Opel or the surviving parent."

Q. Would you explain that in the light of your testimony, Doctor? A. That if the right in rem is established, if the parents demand the establishment of the right in rem, under my second possibility, then there is definitely established a claim in specific property in which the interest exists. We could then say that in case of the death of Fritz von Opel without legitimate issue, this specific property would go to the parents.

419

As long as their right in rem is not established, we have some difficulties to interpret this provision. And it might even have no meaning, until the right in rem is established. But it certainly has not more meaning than that, that in the case of the death of Fritz without legitimate issue, the Opel parents have a claim against the estate, under the German law, against the heirs, for what remains out of the gift, if any.

Q. There are two conditions, are there not, situated in that paragraph? A. First that Fritz von Opel predeceases, and second that he predeceases without legitimate issue.

Q. And if upon the happening of those two conditions—first, that he predeceases his parents, and secondly that he predeceases without legitimate issue—what type of right would the donors have in such a case? Is that merely a personal right? A. Yes.

Q. And that would be a right against the estate of Fritz

von Opel, for what is remaining in the corpus of the
420 gift? A. Yes.

Q. During the course of the opening statement, Doctor, Mr. Burling alluded to the analogy of a trust, using the cestui que trust analysis. You are familiar with trust law in this country, are you not, Doctor? A. Yes.

Q. Would you distinguish a Niessbrauch from a trust? A. As I have already said, I learned to be extremely careful in using concepts of one law in the other law. But as a legal device, Niessbrauch and trust have absolutely nothing to do with each other. They even exclude each other. Let us cite an example:

In cases of trust, the legal owner has no right, no beneficiary right, in this matter. If the beneficiary has a right, and the legal owner is only to the outside of the owner.

And the Niessbrauch, the definite and final right, economic and beneficial right, is with the title owner, only for a certain period of time, for instance, for a lifetime, of the Opel parents. But after this time is over, usually lifetime, then the title owner has no limitation any more.

For instance, if I am a creditor of the title owner, I can certainly in execution of judgment take his title, and his title is only limited in full use by this right in rem of the
parents or of the Niessbrauch, to take out certain
421 parts of the income or all of the income, or whatever it might be.

Q. So that, as I gather your testimony, the analogy between trust and the Niessbrauch is not a true analogy? A. No. It is once in a while used for certain purposes. A lawyer highly regarded by me wrote an article in the Columbia Law Journal where he works out all possible cases in which you might use institutions of German law in many different situations, to accomplish what American law accomplishes by trust. There he mentioned one particular situation in which you might use the Niessbrauch for the same purpose. But that is all. You cannot, beyond that, compare the two institutions.

Q. So that the net result of your testimony thus far, having covered the gift agreement in detail, is that it is a promise to give, and an acceptance by the donee; that title passed through words of conveyance, which cure the lack of notarization; that title actually passed to 600 Opel shares in New York, on the assumption that the words of assignment were valid under New York law; and that the remaining words of the gift agreement, on pages 2 and 3, did not affect in any way the passage of title.

I believe you further testified that the first paragraph on page 2 created an in personam right on behalf of the donors against the donee. There were three possible inter-
422 pretations;

One, merely the personal claim against Fritz; and

Two, merely a personal claim to call upon Fritz to set up a usufruct or Niessbrauch; and

Three, a combination of the first two, a personal right against Fritz, with a further personal right to call upon him to establish the usufruct to secure or guarantee, in effect, the personal claim.

And that the language in connection with the first paragraph on page 3 was merely an in personam right or a personal claim on the surviving mother on behalf of the donors, if the son predeceased without legitimate issue; and that that personal right ran only against the remaining portion of the corpus of the gift at the time of his death.

So that we have only two personal rights against Fritz von Opel. And how would you describe paragraphs 2, 3, and 4, Doctor? Are they also personal rights? A. They are not on the same level with the other rights. The other rights follow Section 525, as charge or impost. This paragraph you refer me to just now I already described on Friday as rules made by the donors for the case of the distribution of the estate of the Opel parents.

Q. So that they are merely testamentary in nature and concerns the testamentary disposition and the arithmetic of such disposition on behalf of the donors? A. Don't call it

"testamentary" in nature, because you come then
423 into the problem of form. Under the express provision of 2050 B.G.B., it is provided that whatever the donor requests in the gift, the accounting has to take place.

Q. Would you direct your attention now, Doctor, to Plaintiff's Exhibit 7. This purports to be a draft of a gift agreement, and I would like to ask you whether or not you are familiar with this draft, Doctor? A. Yes, I studied that in preparation of this testimony.

Mr. Boland: I believe this agreement, Your Honor, has been stipulated by defendants to have been prepared by Dr. Max Hachenburg, and that this is a copy of the draft prepared by him.

Mr. Burling: We have stipulated a draft. I believe you have the number wrong. We do stipulate Plaintiff's Exhibit 8 is a draft prepared by Dr. Max Hachenburg.

Mr. Boland: Yes; thank you very much, Mr. Burling. It is Exhibit 8, Your Honor.

By Mr. Boland:

Q. Dr. Kronstein, are you familiar with the name Dr. Max Hachenburg? A. Certainly.

Q. Will you explain generally who he is? A. Hachenburg
424 was one of the two commentators of the Commercial Code.

Q. The Commercial Code? A. The Commercial Code. And of a number of other statutes. He has, and I am glad he—he is alive—he has the highest possible reputation of a practicing attorney, comparable in this country with John W. Davis or someone similar.

Q. By "commentator", Doctor, I believe you had better explain that a little. We in America might think of radio commentator. Is that in connection with preparing his commentaries? A. Yes. As I mentioned, the code system operates this way, that you go through the Code, to the decisions, and the commentaries.

Hachenburg wrote one of the two National Code commentaries. You would not decide a question, as a Judge or a lawyer, in commercial law, without consulting Hachenburg. You have not to accept it, because there is in some cases a difference of opinion. But no Judge or no practicing attorney will overlook what Hachenburg has to say.

Q. Directing your attention, now, to Plaintiff's Exhibit 8, Doctor, you have testified you have read this particular exhibit. Assuming, now, that this exhibit had been in the hands of the parties to this gift agreement and was used as a basis of the gift agreement, does this draft shed any light upon your interpretation of Exhibit 5? A. Cer-
425 tainly, it does.

Q. Would you explain what light is shed, and how? A. In Section 1—

Q. Would you read the portions to which you are referring aloud, Doctor? A. Yes. In Section 1 it makes what I call the promise and the acceptance, as well as the transfer of title—

"Geheimrat Dr. Wilhelm von Opel and his wife ne ..... residing in Wiesbaden, make a gift, from their community property, to their son Fritz von Opel, residing in Antwerp, of par value RM 6,000,000.00 shares of stock of the Adam Opel Aktiengesellschaft in Ruesselsheim. These shares are No. .....

"The donee accepts this gift gratefully.

"The parents execute this gift by transferring the title to the donated shares. The shares are, at the present time, deposited with General Motors in New York. The title is transferred by assigning the donor's claim to have the shares delivered to them. This claim is assigned herewith. General Motors will be advised of the assignment of this claim by the parties concerned.

"The following further provisions apply to the gift:

"Section 2."

426 Q. Before you get to Section 2, Doctor, generally that mere indicates there was a promise and an acceptance, and the actual assignment of the title? A. The

title is transferred by assignment, by assigning the claim of the donors to have the shares delivered to them.

Q. What I am particularly interested in, Doctor, is whether this draft sheds any light on the first paragraph on page 2. A. Let me see Section 2. You have to interpret Hachenburg's draft in Section 2, in connection with Section 1. In Section 1 he established the promise of conveyance, as well as conveyance. In Section 2 he goes on to establish whatever else—

"The donors reserve to themselves for life the usufruct in three quarters i.e., in par value RM 4,500,000.00 of the donated shares. The balance of RM 1,500,000.00 is exempt from the usufruct. The donors' usufruct expires at the death of the last parents.

"Mr. Fritz von Opel is entitled and, upon demand of the donors obliged, to assign the shares to a holding company which he owns. In this case the parents will have the usufruct in 75 per cent of the shares which the holding company will be required to issue in exchange for the Opel
427 shares. These shall be deposited in the name of the father, Geheimrat Dr. Wilhelm von Opel. After his death these shares shall be considered as deposited for the wife of Geheimrat Wilhelm von Opel, Geheimrat Dr. Wilhelm von Opel and, in case he should predecease his wife, his widow"—and so on.

Q. Does the language you have just read in Section 2 of the draft, Exhibit 8, does that language shed any light on the intention of the parties? A. Yes.

Q. How does it, Doctor, and what light does it shed? A. It says, in paragraph 1, that the donors reserve their Niessbrauch, without establishing the right in rem.

But it says, in Section 2, paragraph 2, that on demand of the Opel parents, Fritz von Opel shall be obliged to assign the shares to a holding company, and that then these holding company shares shall be deposited in the name of the father.

Q. Does that fit into any one of your three possibilities to which you have previously testified, Doctor? A. Absolutely. It is exactly my third possibility.

Under Hachenburg, what he had in mind—and of course I don't know what he had in mind—and knowing Hachenburg and having seen him drafting many, many contracts,

I know that such a contract is not written, just written
428 down, but is studied extremely carefully, and that every word has very much a meaning.

He says, in Section 2, that on demand of the donors, Fritz shall assign the shares to a holding company, and in this case the parents shall have this right, and they shall be deposited in the name of the father.

So he had perfectly in mind that the right in rem shall come in existence at the moment these holding company shares are deposited with the bank, and they shall be dependent upon the demand of the Opel parents, if they demand that; but Fritz, however, might do it without demand.

Q. But you have indicated, by using the Hachenburg draft, you come to the conclusion quite clearly that what the parents intended was that a right in rem upon the demand of the parents to the son be created through the assignment of the holding company shares into the possession of the donors? A. That is the objective test of this draft of Hachenburg's, beyond what the gift agreement you have shown to me shows.

Q. Is there any further indication, by the use of the Hachenburg draft, Exhibit 8? A. Could I see the German again please?

In the draft itself, or in what you call my attention first to Plaintiff's Exhibit 7?

429 Q. I am talking about what is now marked as Plaintiff's Exhibit 8, which is the draft of October 3, 1931, I believe. A. Yes. I call your attention to two points, first on page 2 of the English translation.

Q. Of the Exhibit 8? A. Of the Exhibit 8, in paragraph 3.

Q. The third paragraph on page 3? - A. Yes. In paragraph 3 he again provides that in case that the holding company is established, and the right in rem is established—there are two conditions—then the father guarantees that the son gets a special minimum amount of money.

In Section 3 it says, in paragraph 3,—

"If the holding company has not distributed all or part of its profits, so that the usufructuaries did not draw the proceeds during their lifetime, these reserves together with the holding shares themselves will remain in the hands of the son Fritz von Opel to whom the gift was made."

These two provisions are both dependent upon the establishment of the holding company and of the right in rem. As long as the holding company was not established and the shares were not put into possession and did not remain in possession, there was a complete, free property of Fritz von Opel, and only a personal claim against Fritz, out
430 of Section 2, paragraph 1.

Mr. Burling: I move to strike the answer, Your Honor. The witness said, "As long as the holding company was not adopted." If he has any knowledge at all, he knows it was, and that Uebersee, the plaintiff here, is that corporation.

The Witness: Pardon me. I used the words "If it should not be established", because I only follow the words the draft speaks of.

Mr. Boland: Your Honor, this is a draft of October 3, 1931, as Mr. Burling well knows; and we are endeavoring to get the intent of the parties on October 3, 1931. At that time there was no holding company established and there was no such thing as Uebersee, owned by the plaintiff or by Fritz von Opel here.

And the question to Dr. Kronstein was whether or not this draft gives any light on the intent of the parties, and he is merely describing the draft in view of what the parties could have intended.

Mr. Burling: The witness said that as long as this was not done, then there was no right in rem. But that is a condition contrary to facts, since it was done.

The Court: You can bring that out on cross. And I will make a note as to what the facts are, and if it is not applicable, I will disregard it.

By Mr. Boland:

431 Q. Directing your attention, Doctor, to Plaintiff's Exhibit 9, which is entitled "Fundamental Considerations", the defendants have stipulated that this particular exhibit was prepared by Dr. Hachenburg, the same Dr. Hachenburg who prepared the draft which is Plaintiff's Exhibit 8.

Is this document a fair summary of the Plaintiff's Exhibit 8 which you were just reading from, Doctor? A. It is the preparation of that. It contains the principles on which Exhibit 8 obviously was based.

Q. Does this exhibit, Plaintiff's Exhibit 9, shed any light on the intention of the parties to this gift document, Doctor? A. Can I see the German, please?

Yes.

Q. And would you indicate the particular portion to which you are referring when you make that answer? A. I think very important is number 4.

Q. Number 4? A. Number 4 of this "Fundamental Considerations."

Q. On page 2? Yes; would you read that, please, Doctor? A. It says:

"In order to secure the usufruct, the donated shares or the holding shares replacing them are deposited with a bank in the father's name. By virtue of his usufruct, the
432 father is entitled to vote the shares in the case of such resolution of the holding company which dispose of the actual net profits. Father guarantees to his son that his 25 per cent share of these profits will amount to"—additional sums.

Q. And from that you draw what conclusion, Doctor? A. In order to secure the usufruct, or in the German language, "Zur Sicherstellung" Niessbrauch—and, if you speak of "Sicherheit", or safeguard Niessbrauch—it is absolutely impossible to have any other interpretation but my interpretation number three.

Again he speaks of the contract which is to be made right away, the transfer of the gift is to be made right away, under number 1 of this "Fundamental Considerations." And then it says, under number 3—

"The gift was made subject to a usufruct for life"—

And then it says—

"In order to secure the usufruct."

If the usufruct would have been established as a right in rem right away, there is nothing to secure, because nothing secures itself better than a right in rem itself.

Therefore, from this I say clearly that Hachenburg didn't want to establish a Niessbrauch right away. He wanted to have a personal claim, and then the question of the right in rem is a question of the demand of the parents, or of no demand of the parents, for purpose of securing.

433

Q. So that, Doctor, as I understand your testimony now, after having gone through the gift agreement itself, Exhibit 5, very searchingly, and having gone through the drafts of Hachenburg, that on the basis of these three documents, you have concluded there is no right in rem; that there was no an intent to establish a right in rem, an immediate right in rem. Is that right? A. Yes.

Q. That all drafts, and the document itself, are consistent with the promise of the donors to give and the acceptance by the donee; they are all consistent with the position you have taken, that title actually passed? A. Yes.

Q. Through the Exhibit 5, through the instrument itself, and also consistent with the position that merely personal, in personam claims are reserved to the donors, and that no right in rem was established?

Is your answer yes? A. Yes.

Q. And that no right in rem was intended to be immediately established? Is that right? A. Yes.

Mr. Boland: Your Honor, it is just about 12:30,
434 and I am going to take him into a slightly different phase of this.

The Court: All right. We will resume at 2 o'clock.

(Accordingly, at 12:25 p. m., the luncheon recess was taken until 2 o'clock.)

* * * * *

441 DR. HEINRICH KRONSTEIN resumed the witness stand pursuant to the luncheon recess, and testified further as follows:

442 *Direct Examination* (Resumed)

By Mr. Boland:

Q. Dr. Kronstein, directing your attention to Plaintiff's Exhibit 7, are you familiar with this document? A. Yes; I studied it in preparation of this testimony.

Mr. Boland: Your Honor, this particular exhibit, I believe, has been stipulated by defendants to be a letter from Dr. Hachenburg to Mr. Wilhelm von Opel in which the draft, which is Exhibit 8, was attached and enclosed.

By Mr. Boland:

Q. You are familiar with this document, Doctor? A. Yes, I am.

Q. Is there anything in this letter, Plaintiff's Exhibit No. 7, which would shed light on the intent of the parties? A. Yes.

Q. Would you point out the particular verbiage of the letter and read it aloud, please? A. One point is to be found in the last part.

Q. The last paragraph? A. Of the letter.

Q. Of the letter. A. Yes.

It says: "But the same would apply if the contract were to provide not for a true usufruct, but instead for a
443 purely personal claim to the payment of a corresponding share of the profits. This right also would be part of your property. It is to be evaluated in the same manner as the usufruct itself."

I mean, for purpose of taxation.

Q. From the language in there, he used it in interpreting the intent of the parties? A. It was evidently in the mind of Hachenburg that there should be a possibility. One is merely a contractual right, involving his contractual right, and combining security.

Q. Yes. Possibility one and three? A. Yes.

Q. It is merely a personal claim against the donee? A. Yes.

Q. Or in the alternative, a personal claim against the donee with the right to secure a personal claim by demand and establishment of usufruct? A. It says: usufruct itself. It is a very technical word. It is approximately correct but it doesn't bring out this flavoring. There is a German uneigen. The opposite of that is eigen. Eigen is his. So he has very well in mind that it is—

Q. (Interposing) Well, is there any language in that letter which sheds light upon the intent of the parties to you, Doctor?

444 The Court: He did not finish on that last paragraph.

By the Court:

Q. What right is he talking about? What does the right mean? Part of that property? A. He is talking about taxes.

Q. Do you have the right in personam? A. Yes, sir.

Q. That is a taxable right? A. Yes, sir.

Q. And that is what you call property? A. It is not a property right. It is a claim, and under the German tax law, under that parmeigen, and while you have difficulty of translation, it means all the assets, and is to include his claims, athough it is not property but it is a claim.

Q. You mean a right which he may or may not assert? A. It is against his son, which he may or may not assert.

Q. It would still, however, be returnable for tax purposes? A. It is still to be reported for tax purposes.

I conclude from that that it was clearly in the mind of the people who drafted and discussed the contract, what they did, that the establishment of a right in rem was not
445 the purpose of the agreement. It looks like, as I pointed out before, Hachenburg drafted it and he outlined it. My personal opinion is number three, a personal claim, which he might combine, if he wished, with the right in rem.

By Mr. Boland:

Q. That is demand upon the son to secure that claim with the right in rem by the establishment of usufruct upon the demand? A. Yes, sir.

Q. Is there any other language in that Exhibit 7 which sheds any light, Doctor? A. On page 2, at the end of the second paragraph on page 2:

"Such an arrangement would, at the same time, stress the fact that this is not a fictitious transaction. It is your actual intent that the ownership pass to your son immediately, only the income is reserved to you."

That makes it important for the interpretation of the document, that the first draft of the document had in mind to have the property right transferred, and only income is reserved to you, in the relation between father and son.

I believe that strengthens my opinion on the meaning of this contract.

Mr. Boland: Let me have Plaintiff's Exhibit No. 4.

By Mr. Boland:

446 Q. Doctor, I show you now a document which has been identified as Plaintiff's Exhibit 4 and entitled power of attorney, and ask whether or not you are familiar with this document? A. I studied it in preparation for my testimony; yes.

Q. You have heretofore testified, Doctor, that on the basis of the language of the gift agreement, Exhibit 5, that title passed absolutely to Fritz von Opel. You have testified that your contention in respect of the usufruct is that there is merely a personal claim on behalf of the donor against the donee, and you testified that the language on page 2 and 3 of the gift agreement did not in any way affect the passage of title, did you not? A. Yes, I did.

Q. You have had opportunity to re-read this power of attorney? A. Yes.

Q. You know that the power of attorney is dated October 6, 1931; isn't that true? A. Yes.

Q. If you were to know, Doctor, that Fritz von Opel—assume this: Assume we establish this as a fact: that Fritz von Opel actually came to the United States and went to the National City Bank and exercised the claim against the National City Bank through the use of this power
447 of attorney. Would that in any way affect your testimony in respect of the passage of title to Fritz von Opel under the gift agreement, Exhibit 5? A. No, it would not.

Q. Can you explain why not? A. If the title passed, a power of attorney cannot change the fact. The title passed, and this document as it stands does not shed any doubt that the title passed on October 5th. This document prepared is signed October 6th, so it cannot change the fact that title passed before.

Q. So if I understand your testimony correctly: If title passed on October 5th, then the granting of a power of attorney by the father to the son on October 6th, would in no wise interfere with the passage of title on October 5th? A. No; not at all.

Q. Even if Fritz von Opel were to exercise claim against the National City Bank through the use of a power of attorney? A. Yes, sir.

Mr. Boland: I would like to have marked for identification a letter dated September 22, 1933, addressed to Fritz von Opel by the National City Bank.

(The document referred to was marked Plaintiff's Exhibit No. 47 for identification.)

By Mr. Boland:

448 Q. Doctor, I show you now a document which has been identified as Exhibit No. 47 and ask you to read that document aloud. A. (Reading:) "Mr. Fritz von Opel, New York City.

"Dear Sir:

"We quote the following extract from the cable received from the Deutsche Bank & Disconto Gesellshaft, Frankfurt on October 24, 1931:

"'GEHEIMRAT DR. WILHELM VON OPEL RUESSELSHEIM INSTRUCTED US TO CABLE TO YOU THE FOLLOWING NEW POWER OF ATTORNEY—UNTIL YOU HEAR FROM ME TO THE CONTRARY YOU ARE HEREBY AUTHORIZED AND REQUESTED TO ACT UPON ANY AND ALL INSTRUCTIONS WHICH MAY BE GIVEN YOU FROM TIME TO TIME BY MY SON FRITZ VON OPEL REGARDING ANY

AND ALL FUNDS OR OTHER PROPERTY AT ANY TIME WITH YOU FOR MY ACCOUNT AND TO HONOR EACH AND EVERY WITHDRAWAL HE MAY REQUEST THEREFROM—SIGNED DR. WILHELM VON OPEL.'"

Q. Having had opportunity to read Plaintiff's Exhibit 47 for identification, and assuming that this telegram was in fact signed by Wilhelm von Opel, would that in any way change your testimony in respect to that passage of title? A. No, Mr. Boland. I told you before that this document on its face, dated October 5, 1931, transfers the title to Fritz von Opel. This title passed and no power of
449 attorney whenever given, can change the fact that title passed.

Q. That is assuming title passed on October 5th? A. Yes, sir.

Q. Doctor, you have practiced in Germany for quite some time. Is there anything unusual about having made a gift, where the title passed on one day, and the next day giving a power of attorney to act as the agent of the donor? A. In this banking transaction, you have shares that are deposited in the bank, and the father gives to the son the shares. He does not go to the bank to get the agreement, or statement to the bank, to get the agreement for consideration or examination, and the best way to handle it is to give a power of attorney, so that the bank can give the property out without any further examination. For instance, such occasions of gifts of shares is not the case of the usual business dealings, but if you have the situation, which you have every day, I come to the bank and ask for credit, and the bank tells me: All right, I give you credit, but you assign to me a hundred thousand dollars worth of stock and assign it as of this day, and we will not inform your customers, your debtors, of this assignment, and you give the bank a power of attorney, and we collect on that power of attorney.

This assignment to the bank would be perfectly all
450 right, and the power of attorney which in form looks inconsistent, is perfectly consistent, and if, for instance, a bankruptcy occurs of the assignor, the assignment is perfectly all right, and the power of attorney only given for the purpose of collecting to make things easier.

That is nothing special at all.

I could refer to Mr. von Tour, who in this part of the private law is a leading writer of leading textbooks, and he discussed this question carefully and does not find anything unusual in that.

Q. Getting back to my question, Doctor, I don't believe you have answered it directly.

Is there anything unusual about giving a gift, where the title passes on one day and subsequently to give a power of attorney? A. No. I just don't like your wording, if it is unusual in a gift. Gifts are always unusual because human beings do not make gifts but make contracts for consideration, but when it is usual and the title passes and a power of attorney was given later on, it is perfectly usual and absolutely consistent with the transfer of title.

Q. Let me ask you, Doctor: Assuming it was established in this case that the giving of the power of attorney was for the purpose of facilitating the exercise of the claim against the National City Bank, would you under
451 such circumstances consider it unusual for an attorney to recommend such a procedure? A. No, not at all.

Q. You have testified, Doctor, thus far that the title has passed, according to the agreement, on page 2, and had no effect on the passage of title, certainly any personam rights created, and it was clear that that was the intent of the party. You have also testified that the power of attorney given to the son in respect to the exercise of his right as donee was not unusual, and that they in and of

themselves in any wise changed the passage of title already having taken place. Now, Doctor, directing your attention to another phase of this problem, let us assume that those rights which you have testified about, that they have been created and reserved to the donor. Let us assume that the rights as actually intended by the parties were within the realm of these three possibilities. Under German law can such rights be terminated in any fashion? A. Some of them; certainly.

Q. What is the law of Germany with respect to the termination of right of this nature? A. In regard to my first and third possibility, an understanding or agreement between Fritz von Opel and the parents would be necessary and satisfactory. It is the idea of the law that contractual claims cannot take place one-sided. It has to take
452 place by understanding, and all that is necessary is an informal understanding and that the son's claims shall be waived and abandoned. That is all that is necessary.

Q. And you direct your testimony to possibility one? A. Yes; one and three, and I would say the same in regard to possibility number three. I find, I feel the one-sided assertion by Wilhelm and Marta von Opel would be sufficient because even if the right in rem is established under the specific provision of the law, it can be waived by the party entitled to the right in rem. If the Opel parents could waive the right in rem itself, they can waive the claims to establish the right in rem in the same way they could waive the right in rem itself, that is, by one-sided agreement.

Q. What about possibility two, where the donor has claim against his donee? A. I spoke of possibility two.

Q. You mentioned it as three. A. As possibility three?

Q. Yes. You just testified, as far as the record is concerned, of possibility three, and the testimony which you have just given refers to possibility two? A. Yes, sir.

Q. But you say possibility three. A. Yes; I
453 meant two.

Q. So that your testimony is that in respect to possibility two, where I, the donor, have merely a right against you, a claim in the future upon demand to establish usufruct, it is your opinion that under German law, a one-sided waiver is sufficient on behalf of the donor? A. Yes, sir.

Q. Going to possibility three, where I have a claim against you as donee, plus a further in personam right to call upon you to establish usufruct to secure personal claim. A. It is the same answer as in two. Possibility one would be correct because the basic principal part of possibility three is a contractual claim. A claim for security certainly depends and is contingent on the existence of a contractual claim, and therefore the waiver takes place by understanding.

Mr. Burling: May I note an objection? This goes not to the rules of evidence, but to a point of estoppel.

I would like to show for the record a motion to strike the testimony about waiver on the ground plaintiff was estopped. Now he is going to sue on waiver, and the witness who could testify about waiver is Wilhelm von Opel, and they took his deposition and he didn't say one word about waiver.

Now, he is dead and now we hear about waiver for the first time, and I think that raises estoppel.

454 The Court: I will hear you on that point.

Mr. Burling: I want to be heard on that point.

Mr. Boland: We can establish the right of the parties.

The Court: I will accept it, subject to the materiality of the facts of the case as developed later.

By Mr. Boland:

Q. In respect to this contract your claim against the donee, as I gathered it, it is German law that both parties must agree to the waiver? A. Yes, sir.

Q. And that you explain it has an informal meaning? A. Yes.

Q. Do you mean, express or implied? A. Express or implied.

Q. Either one? A. Yes, sir.

Q. So regardless of which of the three possibilities, if it is established, as a matter of fact, in the course of these proceedings that the parties both agreed to a waiver of whatever rights were reserved to the donor, then it is your testimony, is it not, that under such circumstances and under the opinion of the three possibilities, the right reserved in the donor would have been waived? A. Yes, sir.

Q. And permanent and forever? A. Yes, sir.
455 You only speak now of the German law.

Mr. Boland: This concludes, Your Honor, a portion of Dr. Kronstein's testimony. The second phase of his testimony is in respect to nationality, and we think it would be more in line with orderly presentation of proof if we were to recall this witness at a later date after the facts have been established, and have him testify further on nationality, which is a wholly different subject.

The Court: Is there any objection?

Mr. Burling: No; I would prefer it, and that we have cross examination of him on this part.

May I introduce Miss Magdalena Schoch, a member of the Bar of this Court. She was the first woman to be a professor of law at a German university. She has been a research associate of Harvard Law School and she is our law expert, and I asked her to sit with me.

The Court: All right.

Cross Examination

By Mr. Burling:

* * * * *

471 Q. Will you look at the last paragraph of Plaintiff's Exhibit 5? A. Yes.

Q. Did I understand you to say, on your direct examination, that notwithstanding the last paragraph of the instrument, title passed without any condition? A. I testified that this last paragraph has to be read together with the paragraph before. There are two possible interpretations you might give this paragraph. The one is, the interpretation which I give it, that it establishes contractual rights of the Opel parents, with the result that it is a condition on the transfer of title.

But then this condition is definitely killed and out of existence if Mr. Fritz von Opel sells the 600 or exchanges the 600 shares. Because under German law, if he takes it as a property right, it has to be absolutely exact; you cannot have property an indefinite thing.

472 Q. I wish to address myself to that contention of yours. If I understood you correctly, I could draw up an instrument giving my son my Rembrandt painting, providing, however, if he should predecease me, title would revert to me— A. Yes.

Q. And if he should predecease me, title would automatically revert to me? A. Yes.

Q. So that he took a title subject to a condition? A. Yes.

Q. Supposing I provided in the instrument that my son could exchange my particular Rembrandt, which I will say is the Man with the Golden Helmet, for another Rembrandt

he might like, and which he did, he exchanged the one Rembrandt for another Rembrandt, and then he died; what would happen to the title of that Rembrandt? A. Even in this very limited case you put, the exchange of one Rembrandt to another Rembrandt, I believe we have to interpret the abstract language of the German Code, whether the property rights, title rights, of the father would disappear. Of course, it has to be completely definite and clear and specific in what this right exists.

Q. Would not the Court, at the time the question was tested, listen to the facts; and if it could be estab-
473 lished that the first Rembrandt was in fact exchanged for the second, that then the Court would find that was a sufficient identification of the property? A. That is exactly what I did, in my testimony. I tried to find out, in my direct testimony, I tried to find out an interpretation, which is a gift of the Opel parents—

Q. I am talking about a Rembrandt, Doctor. A. Now, please, in this situation the Court would only say, in your case, that the son would have an obligation to the father to give him, or his estate, a Rembrandt which he finally had. But if the son sells this Rembrandt number three—

Q. Let us stick to the hypothesis I have put. It would be much simpler. A. Yes.

Q. Assuming there is a second Rembrandt, the son having exchanged the first Rembrandt for the second Rembrandt, and the Court hears testimony from the art dealer who says the son did this, and this is the Rembrandt which the son exchanged for the first one, wouldn't the Court then find that was sufficient identification of the painting, so that a property right existed upon the son's death? A. Not for property right—only for contractual obligations.

Q. You say you can never have a condition follow
474 a transfer of the property? That is, you can give property subject to a reverter, but no matter what

happens, if the property is ever transferred, that right in rem cases? Is that right? A. If the property is ever transferred? If the property, in your case, if the Rembrandt is sold and exchanged for another Rembrandt, the parties have to make a new Dinglicher Vertrag, a new conveyance, and have to say, "We hereby agree that the title in this new Rembrandt is substituted for the old title, and we agree title shall pass, or contingent title shall pass."

Q. Is it not true that you are expressing a minority view among German law experts? A. Such a point, I cannot tell you—expressing a minority. I think I follow my teacher and professor, Martin Wolff, along these lines And I believe he represents very much the majority of German law, and not the minority.

Q. You will, of course, agree there is a split of authority on this point? A. A legal question without split of authority is not difficult to find; but I am not aware of a split of authority, in my opinion.

Q. Are you not aware that there are decisions of the German courts on the question of tracing the continuity of the property? A. When property is given for
475 security, this problem is raised. There you might, in specific cases, imply from the very acts of the parties, it is agreed that the conveyance of last Rembrandt shall take place. But you have to show that; something has to happen. Just by the mere fact that you write that into a contract here, and do nothing more, I think that is a specific and abstract rule of the German property law and not to be reconciled with such an interpretation. I don't think so.

Q. You give no effect, then, to the words in the last paragraph on page 3 of the instrument—

"These stocks or the property substituted therefor including the income accrued but not drawn will then revert to the parents Opel or the surviving parent."

A. I give it certainly effect, as I testified in my direct examination. I think that the Opel parents have a claim against the son, or against the estate of the son, for whatever remains out of the gift after these contingencies occur. But as a matter of right in rem, I am unable to construe it.

Q. That is not what the words say, though, is it? A. That is not what the words say, no.

Q. You construe the instrument to mean something other than what the words say? A. If you don't do that, then this section has just no meaning and gives no rights
476 whatever to the Opel parents. It has no other alternative.

Q. Assuming your teacher, Dr. Wolff, is right on the law— A. Mr. Burling, Martin Wolff, in the field of property law, is right.

Q. Is he right as against an opinion of the Supreme Court? A. Yes; but there is no opinion on this point.

Mr. Burling: May I have a moment to confer with counsel, Your Honor? I just want to get the citation of the Supreme Court case, if Your Honor please.

I will come back to it. I can't find the citation immediately, Your Honor.

By Mr. Burling:

Q. Would you state the authorities that you rely on for your view that no property right would follow the substituted property, after the Opel shares were sold? I am again talking about the last paragraph of the instrument. A. By following very elementary and basic authorities, I have to construe through, under the principles of the Code—just a second—let me say it perfectly frankly—it is one of the most embarrassing things that a legal expert has to testify as we would discuss facts. We are dealing here with a legal problem. And I have to have a chance
477 to explain the whole legal theory.

Q. My question is, Doctor, what authorities do—

you rely on? A. My authorities, I will answer you, is the Code, and the entire principles of the German law.

Q. That is not very helpful. The fact is that we have a conflict, and the Court will have to decide between experts here in this case, and it would be helpful if you would tell us what sections of the Code you rely on. A. I would like to see a decision which is inconsistent with the statement which I made. The only explanation I have is that this opinion, this decision, you have, deals with other property.

Q. Doctor, I happen to be cross examining. You are not examining me, but I am examining you. I wish you would tell me what authorities you rely on.

Mr. Boland: Your Honor, I think it is very important, if Mr. Burling has a Supreme Court case contrary to the position taken by this witness, that instead of the witness being required to support what he says with authorities, that Mr. Burling should produce the decision right here and now.

The Court: I think he has the right to ask the authority.

Mr. Boland: He is assuming there is a split of authority.

The Court: No. He is asking if there is an au-
478 thority or a decision that he knows.

(To the witness): Doctor, have you looked that particular point up in the law, or are you just going on elementary principles?

The Witness: Oh, I looked it up.

The Court: Lately?

The Witness: Yes, lately. In fact, the day before I came into this Court, I went over all the points again.

The Court: You think you have some decisions on it?

The Witness: I have some Martin Wolff. I have the commentaries here. They said it is absolutely out of question that you can establish, under German law, an indefinite and unspecified right in any property. That is out of

question, said the Supreme Court decision, and does not exist.

The Court: Once more, I think probably you and he are talking about something different. I think what Mr. Burling is trying to get at is, assuming you had a picture, as you used the illustration, a Rembrandt picture, and had a provision in regard to it, such as in this last paragraph; and the evidence was overwhelming that that picture was swapped for another one, just exchanged for another one, and there isn't any doubt at all about the evidence.

The Witness: In such a case, if the facts are this, if I gave to my son a Rembrandt, and then he writes to me a letter—"Dear Father: I am buying another Rem-
479 brandt, and I would like to exchange Rembrandt number two for Rembrandt number one"—and it is fine; the parties make an agreement and understanding, that the new Rembrandt, the new picture, shall be conveyed to the father as of the death of the son.

The Court: Suppose he didn't write him, and this provision were in the agreement, you see, and he just swapped it and got another; then this wouldn't apply to it? Is that the testimony?

The Witness: In the case of this picture, you could, depending on the facts, how far the father saw the picture; whether he came there and was silent, or he said it was fine—you could there imply.

The Court: Yes; I understand your point; if it is indefinite, you cannot follow it and you cannot trace it and you cannot identify it. I understand your point. It has to be absolutely clear.

The Witness: It has to be clear absolutely without any doubt.

The Court: I have that point. But I think his idea is where there is absolutely no doubt about it, then would this provision apply?

In other words, would the obligation which attached to the original, apply to the substitute, when there is no doubt about it?

The Witness: The obligation, certainly, would apply.

480 The Court: I understand your distinction about whether it goes in rem or not.

The Witness: Whether it goes in rem is another question.

The Court: I understand that; but I think your question there is, isn't it, whether it would apply—

Mr. Burling: Your Honor understands me exactly.

The Court: Your answer is that it would apply, but it wouldn't vest a right in rem.

The Witness: If I represented the creditors of the stock, I certainly would make the point, and I think successfully, that that is the free property of the son.

The Court: I have your distinction so far.

The Witness: Under that, I admit there might be a very limited factual situation, such as Your Honor suggested. Where you have a picture, and the father is informed, or he sees it and silently approves, you might have a certain factual situation where you can say that the reconveyance or a new conveyance in regard to it exists. But you have to keep it very much in very limited lines.

The Court: Well, I got that.

Mr. Burling: The citation, if Your Honor please, which we refer to is Supreme Court, November 18, 1924, Volume 109, R. G. Z. 201.

The Court (to the witness): Do you want to make

481 a note of it?

The Witness: I would like to.

Mr. Burling: I am informed I might have given a wrong citation to the witness, Your Honor. I should have said Volume 136, pages 100 to 106, for the year 1932, decisions of the Supreme Court.

By Mr. Burling:

Q. What I am ultimately trying to get at, Dr. Kronstein, is, suppose this Court found as a fact that the proceeds of the Opel shares were put into a holding company, the Uebersee Finance-Korporation; that nothing else was put into Uebersee Finanz-Korporation, and that all the proceeds were put into Uebersee Finanz-Korporation; then wouldn't the reverter follow through the Opel shares into the Uebersee shares, assuming that the Court found that as a fact? A. I think, Mr. Burling, in my direct I testified that if the Niessbrauch is established, then this section here would certainly follow the property on which the Niessbrauch was established. Then there would be no property any more, because it would specifically and definitely clarify which property is covered by the contract.

Q. Now, you stated this morning, I believe, that you were familiar with Plaintiff's Exhibit 8, which is stipulated to be the Hachenburg draft of the gift agreement? A. 8?

482 Q. Plaintiff's Exhibit 8, the Hachenburg draft, A. Yes.

Q. And you have testified that Mr. Hachenburg was roughly the equivalent at the German Bar to John W. Davis at the American Bar, have you not? A. Yes.

Q. Is it not true that in his draft there is a provision for a reverter and calling also for a following of the property? A. Yes; but let us read that.

He clearly bases this section on this point, that they have nothing, that there can nothing happen to these shares, these Opel shares; that these Opel shares are exchanged into shares of the holding company.

Therefore he writes here, logically, that if he exchanged the shares into shares of the holding company, then the shares of the holding company shall be substituted. And he says, in Section 2, that the shares shall come into the

holding company if the father requests so, or if Fritz von Opel is doing it on his own motion.

Q. Now I ask you to address yourself, going back to Plaintiff's Exhibit 5, to the first paragraph on page 2, the so-called usufruct paragraph.

You have testified concerning various possibilities of construing the usufructuary provisions of this state-
483 ment, have you not? A. Yes, sir.

Q. And you say that the instrument itself did not bring a usufruct to light? A. Yes.

Q. Am I right in thinking that your reason for this is that no delivery to the usufructuary was made? A. This contract does not bring to light a Niessbrauch as a right in rem.

Q. That is right. A. As I testified this morning, it might bring in existence a claim.

Q. A claim to have a Niessbrauch? A. Yes. And the reason I say that, for the establishment of a right in rem, under various split ideas of the third part of the book, it would be necessary to give the Opel parents possession, or susbtitute of possession.

Q. And you say that the reason that the usufruct did not come into existence when this instrument was signed, was that there was no delivery of possession of the res to the Opel parents? A. As far as a right in rem is concerned.

Q. That is what we are talking about. A. As far as a right in rem is concerned, yes, it didn't come in existence, because there was no possession of the parents or
484 joint possession of the parents and Fritz von Opel provided for or established.

Q. Yes; I am talking now always about a right in rem. A. Yes.

Q. A true usufruct is a right in rem, is it not? A. This word "true"—

Q. I will withdraw the question and ask you, is a usufruct a right in rem? A. This general word, not always

is a usufruct necessary. But if you speak of a usufruct under section so and so of B. G. B., that is a right in rem.

Q. Thank you. And the reason the right in rem didn't come into existence is the failure of delivery for possession? A. Of possession.

Q. There is no other failure, is there, that you know of? A. If the usufruct is a right in rem, and suppose it is a right in rem, certainly some other section of this contract would be subject to difficult interpretation. For instance, in the section which says—

"In the event that the parents Opel shall not have drawn in full or in part the income from the shares accruing to them by virtue of their usufruct, the advancement to Fritz von Opel shall be deemed to have increased by the income not drawn and he shall be accountable therefore."

485 If it is a right in rem, then under German law the income becomes property of the Opel parents, and there was absolutely no need, it wouldn't make any understanding, for using such words.

Q. We will come to that, Doctor. Is there any defect in the usufruct other than failure of delivery? A. If you ask for defect, there is no other defect.

Q. Thank you. So that if delivery of res to Wilhelm and Marta von Opel took place on that assumption, then the usufruct came into existence and there was a right in rem in Wilhelm and Marta von Opel? Isn't that true? A. Yes.

Mr. Burling: Now, Your Honor, I would like to ask some hypothetical questions which in fact are based on the Gold case. It would, I think, since this is being tried without a jury, it would simplify matters if, rather than wait until I argue that point later, if I could point out pages in the Gold clause record to Your Honor at the time I ask the hypothetical questions, so that Your Honor will see that I am getting at, and how I believe the record binds the plaintiff.

I take it I am a—it is not in evidence; I cannot prove it—but the fact is that John W. Davis, who was referred to earlier, argued this case in the United States Circuit Court of Appeals in the Second Circuit.

486 If Your Honor please, I am about to question in relation to matters covered by the affidavit of Fritz von Opel, appearing at page 66 of the record:

By Mr. Burling:

Q. Let us suppose, Dr. Kronstein, the hypothetical case—And I have reference to folios 197 and 198, if Your Honor please—

Let us suppose that Fritz von Opel, acting under the power of attorney that has been identified, put the Opel shares to General Motors and obtained roughly $3,700,000, and used a part of that to buy a holding company, namely, the Uebersee Finanz-Korporation; and let us suppose he put the remainder of the proceeds into Uebersee.

And let us suppose that he then held all of the shares of Uebersee, except three shares which were qualifying shares for directors.

And let us suppose he put the shares into a safe deposit box in a bank in Zurich.

And let us suppose further that Fritz von Opel took the key of that box and delivered it to an agent of his father's—

Would that constitute, in your opinion, valid delivery of possession sufficient to create the usufruct? A. Yes, provided all the assumptions you mentioned, that X

487 was the agent of the father, and that this agent, as agent of the father, took possession; then certainly at this moment the Niessbrauch would be established.

Q. Very good. And at that time there would be a right in rem? A. There would be, I believe there would be my third possibility—and of course we would again come into difficulties, in five, this English translation of the gift contract. But it would be a claim of the Opel parents for in-

come, secured by a usufruct on the shares of Ueberseé which he would have at this time.

Q. Just a moment. I thought you testified, Doctor, that the only reason a usufruct did not arise under the first paragraph of page 2 was failure of delivery.

Now you have testified that my hypothesis, the delivery of the key to the safety deposit box, in which the shares resided, to an agent of Wilhelm von Opel, would constitute valid delivery. Why would not, under that hypothesis, why would not the usufruct arise at that moment? A. I told you, immediately after when you broached this question, I told you we now speak only of the first paragraph of page 2. If you speak of the whole agreement, you have to interpret page 2, this usufruct section, together with the section "In the event that the parents Opel shall not have drawn in full or in part" and so forth, and that
488 would lead to the interpretation that a right in rem was established the moment that this key was given to the agent of Wilhelm, if he was the agent; and the right in personam was established by making such delivery.

Q. In other words, you do agree that under my hypothesis, that Fritz von Opel delivered the key to Wilhelm's agent, and at the moment he delivered the key, the right in rem arose and it was complete? A. Provided, let me say, it was complete, provided the agent accepted the key and agreed that these parties agree that that shall be a usufruct—under this provision, yes, sir.

Q. Under that? A. Yes.

Q. And if the defendant can establish that the facts are in accordance with my hypothesis then you would have to agree, would you not, that the usufruct did arise under Plaintiff's Exhibit 5— A. Not under Plaintiff's Exhibit 5, because it would not arise from this agreement. From this agreement there would result a claim for the establishment of the right in rem, and the right in rem would be established by the delivery of the key and the agreement of the parties.

Q. In any event, if we agreed the key was delivered to the agent, as agent for Wilhelm, and the agent accepted the key for the father, then the usufruct did arrive? A. Then my possibility number two and my possibility number three would come into existence.

Q. I wonder if you wouldn't answer my question. Won't you agree, if we establish that Fritz von Opel delivered the key to Hans Frankenberg, Frankenberg acting as Wilhelm's agent, and Frankenberg accepted the key on behalf of Wilhelm, then at that moment the usufruct came into existence? A. Yes, I agree.

Q. You do agree? A. Yes.

Q. Now, you understand, do you not, that it is the contention of the defendant that Fritz and Wilhelm contemplated, at the time the agreement which is Plaintiff's Exhibit 5 was drawn up, that a holding company would be acquired; that the proceeds of the Opel shares would be put in the holding company, and the holding company symbolically was delivered to the father. That, you understand, is our contention.

Now, will you state what provisions, if any, of Plaintiff's Exhibit 5, are in any way inconsistent with Defendant's contention? A. The inconsistency is that it is not included in this contract—inconsistent with your explanation that it has been agreed. I only can testify as to the text of the agreement, or the agreement itself, which has no reference to such an understanding.

Q. The agreement itself is bare of any reference to a holding company? A. Yes.

Q. Is there anything, however, which is inconsistent with that hypothesis? A. No; there is nothing inconsistent.

Q. So, aside from the fact that the parties did not include in Plaintiff's Exhibit 5 a provision that the Opel shares or the proceeds thereof be put into a holding company, which in turn should be delivered to the father, there is nothing in Plaintiff's Exhibit 5 which tends to negate

the defendant's contention? Is that true? A. Since the contract says that if the shares should be sold or exchanged against other property, and so on, certainly any exchange might be possible, including said exchange into holding company shares. Therefore there is nothing inconsistent with such a procedure.

Q. I wonder if I cannot get a yes or no answer—at least a little closer to it. A. Yes, there is nothing inconsistent.

Q. There is nothing inconsistent between the provisions of Plaintiff's Exhibit 5 and the contention which I just stated to you? A. No.

491 Mr. Burling: May I have a moment, Your Honor?

By Mr. Burling:

Q. I will ask you to look once more at Plaintiff's Exhibit 7, please. I believe it has been stipulated that that is a letter which Dr. Hachenburg wrote to Geheimrat von Opel on October 3, 1931. Will you examine that and see whether there is anything in that letter which indicates that Hachenburg understood it was the intention of the parties to create a holding company? A. Yes, it was the understanding of Hachenburg, as the draft shows; and, furthermore, page 2 speaks of, or better, it says:

"My proposal is to have the holding company shares deposited for you. You will then be entitled to vote in the holding company, but only on such matters in which you have an actual interest."

So there is no doubt that Hachenburg's draft had in mind the establishment of the holding company. Whether that is the intention of the Opels or not, I do not know. But it is the intent of this letter and of the draft attached.

Q. I believe you testified this morning you were able to arrive at opinions as to the probable intent of the parties, on the basis of Hachenburg's draft. A. Certainly.

492 Q. Are you aided in any way in determining the probable intent of the parties by observing the fact that Hachenburg put in his draft provisions for a holding company? A. Certainly; I am very much impressed by that; and because it indicates to me that Hachenburg indicated the holding company, and then the holding company was stricken out—that the Opels, or Wronker-Flatow, or whoever it was, didn't like the holding company, and struck it out.

Q. In the Hachenburg draft, which is Plaintiff's Exhibit 8, these words appear in the second paragraph:

"The shares are, at the present time, deposited with General Motors in New York."

A. Yes.

Q. There is no reference to General Motors in the final draft, is there? A. Might I see again the contract?

"Our claim for the delivery of these shares," it says on the first page.

And "These stocks are deposited at present with the bank," in the second paragraph.

There is no reference to General Motors.

Q. In the Hachenburg draft it says the stock is deposited with General Motors, and in the Wronker-Flatow draft it says they are deposited with the bank.

Does that lead you to the conclusion that he didn't 493 like that and struck it out? A. It only leads me to the conclusion that since he drew it himself, that he didn't know whether the shares were deposited with General Motors or in behalf of General Motors in the National City Bank—and that is all I concluded on that.

Q. Well, in any event, the Hachenburg draft recites that the shares were deposited at New York, whereas the Wronker-Flatow draft merely refers to it as a bank.

Isn't it clear to you that Wronker-Flatow, at the time he revised the Hachenburg draft, went through it to delete those portions of the Hachenburg draft which would expose the scheme too much, that is, the scheme to transfer, whether or not it was a valid gift, to transfer what was

in effect a claim against General Motors? A. I have really no way of answering this question because I cannot really see how in Wronker-Flatow's mind it was. I think, oh, I used this section, for the comparison which is to find if there were changes. Where General Motors was to be changed to bank, that has certainly no legal significance. Whether it has any other significance, I don't know.

Mr. Boland: Your Honor, I think questions of that nature are highly improper. It asks if this doesn't show a scheme Wronker-Flatow has.

494 The Court: Well, he has answered it.

Mr. Burling: I concede it would have been objectionable, Your Honor, except for the length to which my friend went this morning in developing inferences.

The Court: I think it is argumentative.

Do you gentlemen have some motion here to argue?

Mr. Ingoldsby: Yes, Your Honor, we have.

The Court (To Mr. Burling): Are you about through with the witness?

Mr. Burling: No, Your Honor, I would have at least half an hour more.

The Court: Then I will hear this argument on the motion.

(To the witness): Can you come back at 10 o'clock in the morning?

The Witness: Yes.

The Court: I will excuse you until ten.

(Witness excused accordingly.)

* * * * * * *

508 PROCEEDINGS

Mr. Ingoldsby: May I address the Court, Your Honor?

The Court: Yes.

Mr. Ingoldsby: Your Honor, I file herewith a memorandum in opposition to the memorandum filed by the Government yesterday.

The Court: All right.

Mr. Ingoldsby: And may I ask at this time, Your Honor, whether we would be entitled to a full copy of the statement from which an excerpt was taken regarding the statement of a witness in Germany?

The statement was contained in the defendant's memorandum filed yesterday regarding a statement purportedly made by Wilhelm von Opel prior to 1933.

Does Your Honor recall the statement to which I refer?

The Court: No, I don't believe I do.

Mr. Ingoldsby: The statement in effect stated that there was a witness in Germany who had stated that some time prior to 1933 Mr. Wilhelm von Opel had stated that he could not trust anyone, even Wronker-Flatow, because Wronker-Flatow had borrowed some money from Mr. von Opel and then had executed a crooked contract for Mr. von Opel, and now Mr. Wronker-Flatow was in effect threatening or shaking down Mr. von Opel.

The Court: And what is your question?

510 Mr. Ingoldsby: My question is, may we have a copy of the entire statement from which the excerpt was taken?

The Court (To counsel for the defendant): What do you say to that?

Mr. Burling: I would be glad to furnish counsel with such copy. I don't have it with me, but tomorrow morning I would be glad to furnish it to counsel.

The Court: All right. I will dispose of this other matter at the noon recess.

Mr. Ingoldsby: And may I ask counsel at this time if they propose to bring that witness from Germany?

Mr. Burling: We do not, Your Honor. We did not learn of this until a day or so before the trial, when we received the report.

Mr. Ingoldsby: All right.

Now, may I ask one other question of the defendant's counsel?

Yesterday Mr. Burling mentioned several times the principle of equitable estoppel. If he intends seriously to contend that the doctrine of equitable estoppel applies to any question of this case, Your Honor, we would like to present a legal memorandum for the benefit of the Court on that topic. If he seriously relies on it, I wonder if he would mind telling us at this time to what set of facts in this case he considers the principle applicable.

511 Mr. Burling: I would be glad to do that. The set of facts to which I refer is that in 1933, a few days before the banks closed, Uebersee Finanz-Korporation bought $1,250,000 of gold coin in the United States. They desired to export this; but on March 4 the President by Executive Order forbade the exportation or possession of gold, and on March 9 Congress ratified that, making it illegal for a private person to possess gold or export gold.

Uebersee had a legal theory that if it could establish that Wilhelm von Opel had a beneficial interest in the gold, then the gold could be exported; and a suit was brought by Uebersee, the plaintiff here, which was in effect a suit against the United States.

It was a suit against the bank account that had possession of the gold, and against the Federal Reserve Bank which, as agent for the Government, was to receive the gold.

The action was to enjoin the Federal Reserve Bank from requiring that the private bank turn over Uebersee's gold, against payment in dollars. And Your Honor will recall, of course, that the paper dollars which Uebersee would get back represented, I think, 59 cents in the old gold dollar. So that some $700,000 was involved. That is, if Uebersee could have gotten the actual gold coins to Switzerland, they would have been some $700,000 better off.

In pressing that suit, Uebersee filed with the
512 District Court for the Southern District of New York affidavits executed by Wronker-Flatow, by a Swiss lawyer named Meyer, and by Fritz von Opel; and also filed as a part of the proceeding legal memoranda

prepared by Isadore Kressel, one of its counsel, and by Davis, Polk, Wardwell, Gardner & Reed, all of which were to the effect that a usufruct had in fact arisen and had followed through the Opel shares into intermediate securities and cash, and finally resided in the gold coin.

That case was argued in the Southern District, and then was argued, as I said yesterday, in the Second Circuit, by John W. Davis, and by Mr. Kressel in rebuttal.

We say that the plaintiff cannot now assert that no usufruct arose, in view of the fact that the plaintiff swore, both as to its understanding of the German law, through its German lawyer, Wronker-Flatow, and as to the facts by the affidavit of Fritz von Opel, that delivery was made; that the key, as I remarked yesterday, was handed over; that the proceeds were put in Uebersee, and the shares of Uebersee were put in Box 1917 in the Swiss Credit Bank—Schweizerische Kreditanstalt—and the key to that box was then delivered to Dr. Hans Frankenberg, as agent for Wilhelm von Opel.

That is the testimony of Fritz von Opel, in the earlier suit. And we propose to argue that that estops the plaintiff now from saying that the usufruct did not
513 arise, or from saying that the key was not delivered.

* * * * *

Dr. Heinrich Kronstein resumed the stand and was examined and testified further as follows:

Cross Examination (Continued)

By Mr. Burling:

Q. Dr. Kronstein, I would like to see if we can in a few words recapitulate what your testimony on cross
514 examination was yesterday. Am I correct in believing that you testified, first, that if and on the hypothesis that Wilhelm von Opel and Fritz von Opel understood in 1931 and intended and agreed that no gift was

to take place, and they understood that the purpose of the transaction was solely to make it look as if Fritz von Opel were the title holder to the 600 shares of Adam von Opel, but that really Wilhelm was to remain in ownership, then even if Plaintiff's Exhibit 5 was executed, title did not pass.

Is that correct, sir? A. Yes, you understand me correctly.

Q. Thank you. And am I also correct in believing that you testified that if, and again on the hypothesis that the proceeds of the shares of the Opel stock were all used either in buying Uebersee or put into Uebersee—

Did you understand me so far? A. Yes, sir.

Q. The proceeds were all put into Uebersee, and the shares of Uebersee were put in Box 1917 in the Schweizerische Kreditanstalt, and the key to that box was handed by Fritz von Opel to Dr. Hans Frankenberg, as agent for Wilhelm, and Frankenberg acted as agent for Wilhelm and received possession of the key; then a valid usufruct arose in the persons of Marta and Wilhelm von Opel under the usufructuary provisions of Plaintiff's Exhibit 5.

Is that correct, sir? A. Yes. But you added, now,
515 the Schweizerische Kreditanstalt, which you didn't mention, at least I didn't get; and Swiss law would apply, probably, to the question whether the right in rem has been established, because that would be situated in Switzerland and would follow the Swiss law. If it would follow the German law, in which I am only an expert, on the Niessbrauch, I don't know whether it would be established by this method.

Q. But under the German law, is it not true that delivery at Zurich would constitute valid delivery? A. No, not as a matter of German law; because, as a matter of German law, German conflict law looks to the place where the property is situated. Therefore the German conflict law would look to the Swiss law for the question whether the right in rem has been established.

Q. So it is your opinion, is it, that my present hypothesis, that is, if the delivery took place in Zurich, then it is impossible for a German lawyer to answer the question, because he does not know what the Swiss law is on that point, theoretically? A. At least from the theory of an expert.

Q. From the theoretical point as an expert? A. Yes.

Q. I understand. Now, did I also understand you to say, Doctor, that there is nothing in the Hachenburg
516 draft, or the Hachenburg letter transmitting the draft, or in the conveyance itself, that is, Plaintiff's Exhibit 5, which is inconsistent with the hypothesis I just stated? A. I stated so.

Q. Now, my next questions, Doctor, are not designed to suggest anything more than the possibility that a lawyer becomes interested in a case he works on, and that sometimes affects his judgment--nothing more than that, sir.

Will you state when you were first connected with this case? A. I was consulted before the first deposition in Germany took place, and was asked to support Mr. Connor in taking the deposition in Germany.

Q. And when were you first consulted, please, Doctor? A. That was about July, maybe in June, 1947.

Q. And then you and Mr. Connor traveled to Germany for the purpose of taking the Wiesbaden depositions? A. Yes.

Q. Is that it? A. Yes, sir.

Q. You acted as interpreter during those depositions for Mr. Connor? A. Yes, I did.

Q. And did you also advise Mr. Connor on the
517 general conduct of the depositions? A. Mr. Connor doesn't need my advice on taking depositions. But I advised him on the German law.

Q. I see. And you also conducted some investigational activities in Germany, did you not? A. No.

Q. Have you ever been in Ludwigshafen? A. No; I wasn't even at the time I was general claims assistant, in Ludwigshafen; I wasn't in Ludwigshafen for many years.

I never was in Ludwigshafen—I never did anything in the form of investigation. All that I did was that the lawyers for the Government and Connor asked me to go to Ruesselsheim and to look over certain files and to bring to both lawyers whatever I found there, which is what I did.

Q. Does the name Giulini mean anything to you Doctor? A. Oh, yes—a former client and a friend of mine.

Q. Have you ever made any inquiries concerning this case of any persons associated with Giulini Brothers? A. No; I wrote to my former law partner, who was my law partner at the time I was there; I wrote to him, after I read the name of Giulini in the case, and asked him about the facts he has in his files.

Q. That is, facts concerning either Uebersee's participation or Fritz von Opel's participation in the production of bauxite in Hungary? Is that right? A. Yes.

518 Q. You know, as a matter of personal knowledge, do you not, that Mr. Fritz von Opel's funds in the United States—whether or not they are his, the ones he claims to own—have been vested by the Alien Property Custodian? A. Yes.

Q. You know of your own knowledge, also, do you not, that the plaintiff corporation, Uebersee Finanz-Korporation, has been blocked in Switzerland? Isn't that true? A. I don't know that out of direct knowledge. I know that only from reading the files, that that was blocked under the Washington Accord, I think—the use of the word "blocked", the Washington Accord provides that Switzerland in all cases in which doubt exists, on the ownership, will advise firms that they cannot make any disposition of their property until a final finding by the American and by the Swiss Compensation Office, which operated under the American-Swiss Accord, until it has made its final finding.

Q. What I am getting at is, you know the estate cannot use any funds it has, it cannot now dispose of them. A. It cannot dispose of the funds in the United States. This

blocking; therefore—I didn't want to use the word "blocking"—only refers to the question whether Uebersee can get the property back in the United States. Under the Washington Accord, as far as I understand it, Switzerland is authorized to make the first finding, whether a firm having property in the United States is German or not German. And as long as this investigation is not finished, the Compensation Office doesn't hand in the so-called certification. And the blocking has only to do with the property within the United States.

519

Q. Well, the Accord refers expressly to property within Switzerland, doesn't it? A. No; it refers to corporations established in Switzerland. Certainly there are provisions in regard to property in Switzerland. But this certification provision, and as far as I know, I have no knowledge of this case. I am now going a little bit in the field of speculation, because I don't know.

Q. Is it not your personal opinion that the plaintiff corporation has no funds which it can dispose of in Switzerland? A. I really haven't seen any of the papers. I haven't seen any of the documents. I really don't know how I can make under oath a statement of the actual situation.

Q. Then I will ask you another question: You haven't received any funds from the plaintiff corporation in Switzerland, have you?

Mr. Boland: Your Honor, we object to that question. This seems to be an attempt to look for funds which have not been vested by the Alien Property Custodian, and I suggest this is not the proper place to do that.

520

The Court: What is the purpose of this inquiry?—as to whether he has received any funds from Switzerland?

Mr. Burling: The purpose of the inquiry is to show he has not received any funds from Switzerland, and the plaintiff could not, at the present time—

The Court: I don't know whether that is correct cross examination.

Mr. Burling: Very well, Your Honor.

Mr. Gallagher: May I state Dr. Kronstein has been compensated from Switzerland during the past year and he is not waiting, as Mr. Burling is trying to infer, that he is not going to get anything until this case is over.

The Court: Well, gentlemen, if you want to go into it, it is all right with me. I thought one of you was objecting.

Mr. Boland: We do object, Your Honor.

Mr. Gallagher: To Mr. Burling's line of inquiry.

The Court: Very well. We will let it all go out.

By Mr. Burling:

Q. Have you examined the photostat of the decision of the German Supreme Court dated April 8, 1932, in Volume 136, pages 100 et seq.? A. I got it this morning, and I recognized this decision.

521 Q. Have you had occasion to read it? A. Yes; I know the case.

Q. You do? A. Yes. I didn't know yesterday the number of it. When you said Volume 136, and the number, I didn't know it by the number.

Q. Naturally, but you can express an opinion about it? A. Certainly, definitely.

Q. Is it not correct that in this case the plaintiff, a manufacturer of sugar, sold to a merchant a consignment of sugar, agreeing with him that title should remain with the merchant until the purchaser had paid in full? Is that correct? A. Yes.

Q. And is it not correct that the agreement was that the buyer was to resell the merchandise as his own, and if he sold it prior to the payment of the purchase price, the proceeds obtained, or the claims resulting from the resale, were to pass into the ownership of the manufacturer, that is, the plaintiff? A. The claims?

Q. The proceeds. A. The proceeds, the claims, for the sale of the sugar. He can sell the sugar, and then it is

agreed that instead of that, instead of the sugar,
522 the claims shall be assigned to the manufacturer.

Q. Isn't it true that the agreement also contemplated, if the resale price was paid, that is, the proceeds were received, that title to the proceeds— A. The money.

Q. That title to the money passed automatically to the original seller? A. The money, yes.

Q. Thank you. And is it not true that in that case the man who first bought the sugar did in fact resell it, and the money was put in his bank account? A. The claims arose, since the claims were given to the manufacturer, and it was the claims; and the money came in on these claims, and the money was certainly owned by the manufacturer.

Q. I am only trying to get the facts straight, Doctor. A. Yes, sir.

Q. Will you listen to the facts and see if you do not agree with me. Isn't it a fact that the sugar was resold, and the purchase price was put in the seller's bank account? A. It was agreed—

Q. Isn't that true, Doctor? A. It is not so true. I will have to say a word to that. The agreement is A sells to B sugar. B cannot pay. Conditional sale. Property
523 title remains in the seller until payment is made.

It is furthermore agreed that if B doesn't sell for cash, but sells for claim, that this claim shall be assigned to the manufacturer, to A.

And certainly if the money comes in out of the assigned claims, then this money goes to the producer.

Q. Doctor, I will ask you again, isn't it the fact that in this case B did sell the sugar and did receive payment, and the payment went into B's bank account? A. You skip one important point in the case. B sold the sugar. B acquired claims for the sugar. The claims were assigned to the producer, and when the money came in, the money was certainly given to the manufacturer.

Q. The money was not given to the manufacturer—and wasn't it given to B? A. Yes, it was paid to B; but as

soon as it arrived in B's possession, it had to be handed out, and the property, or this money, was considered transferred to the manufacturer.

Q. Ultimately B held property, didn't he? A. Yes.

Q. And at the time he held property, the money was in B's bank account, wasn't it? A. Yes.

Q. And is it not true that A asserted that he owned the money in B's bank account? A. Yes.

524 Q. And isn't it true that the trustees in bankruptcy said that all A had was a claim against B? A. Yes.

Q. And isn't it true that the trustees made the argument that A could not claim the proceeds, because they lacked full description? A. Lack of description, not of property, but of claims—of claims. That is something entirely different.

Q. But the res we are talking about is money in B's bank account? A. But the point is entirely in the case whether you can exchange claims, and exactly the situation is the same under the American law. If you take the Benedict case, and the Upton case, you see you have in the United States exactly the same situation, that while you cannot exchange personal property, but you can exchange claims.

For instance, in the Upton case, the money comes in, and the buyer receives the money; he has to hand in the money to the seller. And if he doesn't the money is the seller's money. But in regard to personal property, that is not the case.

I brought here, Mr. Burling, an article which brings together all these problems, especially to distinguish the case you just tell me, which shows this case has
525 absolutely no bearing on the question of personal property; that in regard to personal property, the property has to be as specific as possible.

This article even criticizes the Supreme Court, it is so absolutely opposed to any compromise. And it says look

to the situation in claims; and they look here to 136, 100, and in similar cases where the Supreme Court permits the exchange of claims.

"As to personal property," says the article, "since 1934 no Supreme Court decision or any other court decision gives us any hope that this absolute and specific rule is changed."

Q. What is the citation of that article? A. The article is 138 Archiv fur die Civilistische Praxis, which would be especially known to your experts, on page 350, to determine the specific property in cases of transfer of title, and of assignment, compared.

Now, I don't want to take more of your time. I would otherwise say one more word of distinction.

Q. Well, now, addressing your attention to Mr. Boland's questions to you as to the nature of a usufruct, I am now talking in general terms and assuming that a usufruct has arisen in property. What rights does a usufructuary have in the property of which he is the usufructuary? A.

526 There we have to look to two points. The first is is a statute which enumerates the rights of a person having a right in rem, called Niessbrauch.

Furthermore we have to look to the contractual relationship to the person establishing the Niessbrauch, and the Niessbraucher. As long as the property, the title, is not given up and sold to anyone else, there is a contractual relationship between the two parties governing even in the right in rem. So I have to tell you that, the provisions of the Civil Code govern, if the contract doesn't say anything. They always govern in the relationship of an assignee of a title only and, third, the Niessbraucher.

Q. You can't answer my question without looking at the particular contract which creates the usufruct? Is that right? A. Yes, I think certainly it would be a necessary point to consider. But certainly we can look in the provisions of the statute, which are to be found in the third part of the book.

Q. By the way, the third part of the book relates to rights in rem, does it not? A. To rights in rem.

Q. Perhaps we can go along a little faster, if you will let me put the questions. A. No; I could answer that very fast. We have here to look, since we have to do with
527 shares, and shares in Germany are a bearer instrument, we have to look for the specific provision for bearer instrument, and that is Section 1081.

So it says that in such a case that joint possession shall be given to the title owners, in the Niessbrauchers, which is called the usufructuary.

Q. Let me interrupt you. First, is it clear that the usufructuary has a right in rem to the property? A. Yes, once the usufruct and the right in rem is established, he has the right in rem.

Q. And he has a right in rem? A. Yes; I prefer to call it "joint title."

Q. Is it not true also that the person having the usufructuary interest has a considerable voice in the management of the property? A. The statute again says that the Niessbraucher and the title owner of the bearer instrument are obliged to each other to cooperate for the purpose of collecting the due capital or to collect interests or dividends or to other measures required for the purpose of an orderly administration of the property. That is Section 1083.

Q. And then the case of shares, the usufructuary was entitled to vote the shares in so far as the vote was a matter affecting his usufructuary interest? Isn't that true? A. That is, in the German literature, very much a question of discussion. And as far as I can see,
528 there is no decided case. But if you look in the books and the commentaries, you find, for instance, the position taken by Feine, saying that all the voting rights are with the owner.

And you see Staub's position, taking a middle view, saying that the owner has the right to vote for all matters

which have to do with income, and that the Niessbraucher has a right to do the voting in respect to the income.

Q. Didn't you misspeak yourself when you said the owner had the right to vote for all matters regarding income? A. No. The position, one, is that the title owner has all voting rights; and the second position is that the title owner has the rights for all measures which have nothing to do with income; while the Niessbraucher shall vote in regard to income. And the third position taken is that the Niessbraucher has all the voting rights.

Q. And you know, do you not, that Dr. Hachenburg in advising Wilhelm von Opel took the middle position? Isn't that what he says? A. He suggested to have it as a contractual provision. As I told you before, you have to look at the relationship between the parties, the contractual position. And he wanted to write that into the contract, so that the voting rights, in certain cases, shall be with the Niessbraucher parents, and in other cases shall be with the title owner.

Q. And the usufructuary could prevent the ef-
529 fective sale of the property, could he not? A. Certainly he can prevent the disposition of the property, if the right in rem is once established.

Q. You are a professor of comparative law, are you not? A. I am teaching comparative law for eight years.

Q. Now, Mr. Boland yesterday asked you something about the comparison between American trust law and German usufruct law. A. Yes, sir.

Q. During the life of a usufruct, will you compare the position of an American cestui que trust and a German usufructuary? A. First we have, under your own question, to limit the situation to the lifetime of the usufructuary. There, for instance, the title owner can dispose of his property, of his title right, at any time—sell it to whomever he wants. And such property is only limited by whatever rights the usufructuary or the Niessbraucher has.

Q. Will you explain what it is that the title owner under a usufruct can sell?—what economic value? A. Let me give you a case. I have a house and I make a Niessbrauch on my house. This Niessbrauch comes to an end—

Q. But my hypothesis is that the question— A. Now, pardon me—

530 Q. The life of the usufruct— A. Pardon me. But the economic value cannot be determined, without looking to what happened later. Certainly if I can sell my house, I will sell my house at the regular value of the real property, minus the value of this, I might call burden or lien on the property.

If the Niessbraucher is 78 years of age, the Niessbrauch will not mean much to the economic value of the house. If he is 24 and in best health, and the Niessbrauch is established for the whole life, it will mean much. Therefore I cannot give you a general statement.

Q. All right. In general, however, during the life of the Niessbrauch, will you not agree that the person having the Niessbrauch or usufructuary interest has a greater interest in the property than the American cestui que trust?—a very much greater interest? A. Would you repeat that? I didn't get the beginning of your question.

Q. Addressing yourself to the period of time during which a usufruct exists, will you not agree that the interest in the property of a usufructuary is very much greater than the interest of an American cestui que trust in the property? A. If you understand the interest with power, certainly under the trust law the beneficiary cannot exercise any power over the property. While, as we have

531 just described, the Niessbraucher has the right in rem, direct rights for the purpose of administration and so on. If you understand power with interest, I agree with you

Q. That is to say, over and above the interests of a cestui que trust, a usufructuary has the power to go-possession of the res; he may or may not, depending upon

which view of the German law you take, have the right to vote the shares, and he can effectively prevent the sale of the res? Is that not correct? A. If the right in rem is established, yes.

Q. Of course, and the right in rem is established if there is a usufruct. A. I think, Mr. Burling, as I say in absolute consistence with all the German writers, if we have to distinguish between Eigentlicher and Un Eigentlicher, if it is established as a contractual right, there is no right in rem. Just by the fact that the word Niessbrauch is used, I wouldn't like to decide whether there is a right in rem.

Q. Doctor, how is a Niessbrauch or usufruct characterized in the German Code? A. It is perfectly correct that the German Civil Code deals only with the right in rem.

Q. Thank you. A. You have, for instance, in mortgages, in all these cases, you might have contractual rights.
532 You have chattel mortgages and real property mortgages by contract, where I say I will not sell my house until it is paid back.

Q. But, Doctor, is it not a fact that a usufruct is a right in rem under the German law? Doesn't the Code so provide? A. This answer I will never give, that the Niessbrauch under the German law is a right in rem. All I say is that the Civil Code only deals with the Niessbrauch as a right in rem. But aside from that, there exists a contractual right of the Niessbraucher.

Q. It doubtless can provide all kinds of contractual rights, Doctor. But a usufruct, under every authority you can find, is a right in rem, isn't it? A. I can only answer that, that the Civil Code deals only with the right in rem. If I would see a case, I am not satisfied with looking on the word. I have to look on the law.

Q. The concept of usufruct comes from the Roman law, does it not? A. Mr. Burling, I am working in this field now for too many years; so I can really only tell you I

do not believe the usufruct comes from the Roman law. But my opinion is entirely unimportant. I believe it comes from the Germanic law. Other people might believe it comes from Roman law. But if you put me in the
533 position of my own scholarly work, I come to the point where I can testify. Of course, that is my own opinion.

Q. You mean to say that the concept of usufruct is not well known in the Roman law? A. And I believe as an entirely different thing, because the Roman property law and the Roman title law is different from the Germanic, and the Germanic property law doesn't come from the Roman, only with the German title law.

It is so closely connected; but, as I said yesterday, there are two schools of the German, and I belong to the school of Martin Wolff, and we worked on this problem for many years. I wrote my Doctor's thesis on a problem very close to that, and I cannot say it comes from Roman law, because I don't believe it.

Q. Don't most authorities say that the German law is the so-called civil law? A. It is one of the civil laws, yes.

Q. And don't most authorities regard the civil law as stemming from Roman law? A. As I advised, if you would look at the book of Buckland and McNair, two of the greatest English scholars, you will see that these two great scholars come to exactly opposite results. But I know that generally you speak of civil law coming from Roman law. That is a very loose and incorrect
534 language.

Q. I wonder if you would please answer my question, Doctor: Don't most authorities regard the civil law as stemming from the Roman law? A. No authority today takes this position.

Q. No authority? A. No, no authority in the field of history takes this position.

Q. That is to say, your position now is that every authority in the field of history as well takes the position that the civil does not come from Roman law? Is that right? A. Please, Mr. Burling, I can't answer that.

Q. I do wish you would answer the question yes or no. A. I cannot say yes or no. I can only say that certainly some aspects of the civil law problems come from Roman law. That is all I can say.

Q. I will come to another point. Did you not testify yesterday that a devisen inlander, owning American dollars, or owning American securities, was under an obligation pursuant to the foreign exchange decrees of July, 1931, as amended, to report and to tender such American dollars or American securities to the German Reichsbank against a payment in marks? A. Yes.

Q. And under the German foreign exchange regulations, in the month of November, 1931, a devisen inlander
535 having dollars or American securities could not transfer those dollars or American securities to anyone except the Reichsbank without a license, could he? A. Would you be good enough to repeat that?

Q. Yes, sir. Before I do that, I will ask to have marked for identification a photostat Reichsgesetzblatt, pages 421 to 425, for August 1, 1931.

(The photostat was accordingly marked for identification as Defendant's Exhibit No. 31.)

By Mr. Burling:

Q. I hand Defendant's Exhibit 31 for identification to the witness. Will you agree, Doctor, that that is a photostat of the Reichsgesetzblatt? A. Yes.

Q. Am I not right that that constitutes an executive order concerning foreign exchange control, promulgated on August 1, 1931? A. Yes.

Q. Now, will you turn to Section 3 and state whether the following translation is correct:

"Foreign currency or credits payable in foreign currency which have been acquired otherwise than in accordance with Section 2, may be transferred only under a license in writing of the Office of Foreign Exchange Con-

trol, except where such assets are sold to the
536 Reichsbank or one of the banks provided for in Section 2, paragraph 3."

A. Yes.

Q. Now, will you tell me whether the following is a correct translation of Section 4—

"Foreign securities not listed on a German stock exchange may be acquired for a consideration only under a license in writing of the Office of Foreign Exchange Control.

"Foreign securities not listed on a German stock exchange may be transferred only under a license in writing of the Office of Foreign Exchange Control, except where such securities are sold to the Reichsbank or one of the banks contemplated by Section 2, paragraph 3."

A. Yes.

Q. Now will you look at Section 12, please, Doctor. Is this a correct translation—

"Any transactions which violate any of the provisions of Sections 3 to 11 are void."

A. Yes, that is correct.

Q. Now I want you to assume a hypothesis. Assume that no gift took place and no agreement was executed between Wilhelm and Fritz von Opel on October 5, 1931.

But assume instead that on October 6 Wilhelm
537 gave Fritz a power of attorney over the 600 Opel shares, and assume that Fritz left Wiesbaden on the 6th, went to New York, put the shares to General Motors, received back as attorney for his father either cash or General Motors shares or claims against General Motors. A. Yes.

Q. Assume that Fritz then returned in November to Wiesbaden, and that he and his father then drew up Plaintiff's Exhibit 5 and put the date October 5 on it. A. Yes.

Q. Would any title have passed on that hypothesis, from Wilhelm to Fritz? A. On this strict hypothesis, no title under German law would have passed.

Q. The fact that the instrument was pre-dated would be irrelevant, wouldn't it?

I mean, the fact that it bore the date October 5 would be irrelevant if the transaction in fact— A. If, on October 5, a full agreement would be made, an oral agreement would be made, and it would only be provided for to write it down later, then the agreement would be made on October 5 and would become valid by taking the property.

But if what you call pre-dated means the agreement was made on October 24 or November 10 or whatever,
538 and then written with the date of October 5, when the oral agreement was made in November, certainly the agreement would be void under German law.

Q. If an oral agreement had been made on October 5, that a gift would be made, title would not have passed to Fritz, would it, on October 5? A. It would have passed in the moment, as explained in direct, when the conveyance took place.

Q. What delivery would have taken place on October to Fritz? A. Suppose an oral agreement, as a mere matter of assumption, suppose an agreement is made on October 5; power of attorney is given; and it is said by the father to the son, "You go to America and you take this property, and it is our understanding that this property shall be yours as soon as you take it."

It would have all the elements of a gift promise and gift acceptance, and the contract would become valid by taking. And then it didn't become effective in November, but the moment the Opel shares are handed to the son.

Q. What is there in your hypothesis that would constitute delivery? A. The taking, if it is agreed between the parties, that Fritz von Opel shall go to New York and take the shares, the delivery is the taking of the shares in New York.

539 Q. And your view is that that constitutes delivery as a gift, even though Fritz von Opel puts the shares to General Motors under an instrument— A. I said, in

fact, I do not know. I only know as a matter of assumption. I say if the agreement is made on October 5, with the understanding that Fritz shall go to New York and go to wherever these shares are and take these shares, when the agreement would become fully valid, at the moment he takes the shares.

Q. Would he not have to take the shares in his own name, for that to be true? A. No. The question of the name, then you come to the problem of the power of attorney. I don't think that would be, in this perfectly hypothetical case, of importance. If the agreement is that father tells son, "I hereby make you the gift of these shares. Go to the bank where the shares are. Take these shares. And we agree that as soon as you take the shares, it shall be yours."

The contract would become valid the moment he takes the shares.

Q. And that is true, in your opinion, even though the son in taking the shares is acting under a power of attorney naming him attorney in fact for his father, and even though the proceeds of the sale of the shares are deposited in his father's bank account? A. The question of
540 whether it was a gift or not a gift, is a problem of the internal relation between donor and donee.

The power of attorney has to do with the external, with the relationship with the third parties. And therefore it has absolutely nothing to do with this question.

I can tell you a case which I can only give to show it might be, to qualify this answer, because the word "predating" might have so many different meanings. If it is just straight making an agreement on November 25 and writing October 5 certainly there is no agreement before November 25.

Q. We could get along much faster, Doctor, if you would listen to my question and answer if, and then let us go to the next question.

I do not believe you have answered my question. Do you assert that on the hypothesis that father and son made

an oral agreement on October 5; that the father did give the son the stock, and the father gave the son a power of attorney, and the son went to New York and put the shares to General Motors, acting under an instrument which called him attorney in fact for his father; and that he then deposited the proceeds of the shares in his father's bank account—would that constitute a valid gift to the son? A. I can only answer this question exactly if you tell me the words of the oral agreement. If you tell me that,
541 I can give you an exact answer.

Q. Supposing that the father and the son agreed on October 5 that a gift was to be made to the son which would be reduced to writing at a later date, and the instrument predated.

And supposing that the father then gave the son the power of attorney, the son went to New York and put the shares to General Motors under the power of attorney and deposited the proceeds of the sale in his father's bank account.

Would that constitute a valid gift to the son, at that moment? A. I would be perfectly—maybe just I didn't get it, but I didn't get the words of the oral agreement, the contents of the oral agreements. Because therefore depends my answer, what they actually said.

Q. The hypothesis is that the father says to the son, "I will give you the shares, but we need more time to arrive at a proper agreement. So you go now and sell the shares under the power of attorney. When you come back we will draw up the instrument and predate it so that it will look as if we entered into a written agreement today." A. If such language is used, especially as the words "I will make you a gift", and there are questions open to be discussed, there is no complete contract and there
542 no title would pass. So it depends entirely on this point what the agreement is.

Q. But on my hypothesis title would not pass? A. No, on this hypothesis, title would not pass.

Q. And, in fact, title would not pass, assuming the oral agreement and the subsequent written agreement, unless every provision of the gift agreement were in fact agreed upon on October 5? A. Every essential.

Q. Every essential. But if there was any provision left open for further discussion or for further investigation of the law, then title would not pass? Is that true? A. Any essential provision. Understandings in regard to minor things would be different. But the essential thing that has to be covered, there has to be an oral agreement covering all the essential things.

Q. Assuming that there was no such oral agreement on the 5th, which covered every essential element, and assuming that the instrument which is Plaintiff's Exhibit 5 were executed in November and predated, then you have agreed that the gift would be void? A. Yes.

Q. And if it would be void, the title remained in Wilhelm von Opel, did it not? A. Since the property was
543 not situated in Germany, but in the United States, it isn't a question I can answer as an expert on German law.

Q. The property was shares of Adam Opel, A. G. Is that right? A. It doesn't make any difference—

Q. Is that right, Doctor, whether it makes any difference or not? A. Yes.

Q. And Adam Opel, A. G. was a corporation existing under the laws of Germany, was it not? A. Yes.

Q. And under the hypothesis, Wilhelm von Opel was a citizen and resident of Germany, was he not? A. Yes.

Q. And under the hypothesis, Fritz von Opel was a German national, was he not? A. Yes.

Q. And under the hypothesis, both men were acting in Wiesbaden, Germany, were they not? A. Yes.

Q. Now, is it your position that if the father made a gift to the son, which was declared void, that is, the hypothesis again is that this happened in November. A. Yes.

Q. And that was declared void by Section 12 of
544 the decree of August 1, 1931, the German Court would nevertheless say, "We don't know who has title"? A. The German Court?

Q. That is right. A. So far as the question what the German Court would say, the German Court would not recognize transfer of title.

Q. That is what I am asking you, as a German expert. And under the German law, the title remained in Wilhelm von Opel? A. Yes, under German law the title remained in Wilhelm von Opel.

Q. Thank you. Now, you were asked by Mr. Boland yesterday about how, assuming that a right arose under the usufructuary provision in Plaintiff's Exhibit 5, how such a right might cease to exist. I want you to direct your attention to the hypothesis that a valid usufruct in Wilhelm and Marta did arise under Plaintiff's Exhibit 5, coupled with delivery of the key to Hans Frankenberg. A. It is again your assumption that that is in Switzerland?

Q. In Zurich, yes. A. Then the question of how this right in sem would be waived or became terminated, is a matter of Swiss law.

Q. A German Court would say that it could not
545 determine— A. It could determine it, but it would look to the Swiss law for certain information.

Q. I see. A. Because if the property is situated in Switzerland, under German law—and I can only answer you under German law what the result would be, if it is applicable.

Q. Let us examine that a little. I will vary the hypothesis. Supposing the alleged delivery had taken place in Wiesbaden instead of Zurich. A. And the property is situated in Wiesbaden?

Q. That is right—a safe deposit box in Wiesbaden, rather than a safe deposit box in Zurich. Then how would it be possible for the usufructuary right to come to an end? A. Section 1604. For the purpose of abandonment of Niessbrauch, the statement of the Niessbraucher is sufficient, the statement that he waives or abandons the Niessbrauch is sufficient.

Q. Again assuming that the property was situated in Wiesbaden, the usufructuary had a right in rem in the property, did he not? A. If the right in rem is established.

Q. Under the hypothesis that I have given you, Wilhelm and Marta von Opel would have a right in rem in the Uebersee shares.

Now, again assuming the property to be situated
546 in Wiesbaden, they could not dispose of or transfer that right in rem to foreign securities, without a license, could they? A. You can never transfer a Niessbrauch. The Niessbrauch is strictly a personal right of the person who has this right. It can never be transferred or assigned.

Q. I don't mean to quibble with you, and I hope that is reciprocal. Dr. Kronstein, if A has a Niessbrauch in property, and B is a title holder, and A abandons the Niessbrauch— A. Yes.

Q. That transfers that interest back from A to B, doesn't it? A. Certainly. Whatever interest the beneficiary had is now merged with the title holder.

Q. So that that interest moves from A to B and is transferred, isn't it? A. Yes.

Q. And you couldn't transfer an in rem interest in foreign securities without a license, could you? A. You could not, I suppose, of foreign securities—exactly your question, you could not do that. You couldn't dispose of rights in foreign securities without license.

Q. So that Wilhelm and Marta von Opel could not have abandoned their usufructuary interest without a license, could they?—the usufructuary interest in Uebersee, a Swiss corporation? A. In my opinion, this
547 transaction would require a license.

Q. Thank you. A. But there are other opinions to be found.

Q. I am asking your opinion, Doctor.

Mr. Gallagher: Your example is with the property in Wiesbaden? Is that not correct?

Mr. Burling: So far. I am coming to the next step.

By Mr. Burling:

Q. And if they didn't have a license, and if they purported to abandon the usufruct, that purported abandonment would be void under Section of the decree of August 1, wouldn't it? A. Yes.

Q. Now, then, you have had some judicial experience in Germany? A. Yes.

Q. What is your opinion of what a German Court would have done if the situation had been that the property, the shares of Uebersee, were in a box in Zurich and the key was in the hands of Wilhelm's agent in Zurich? Then could Wilhelm and Marta, under German law, effectively transfer an interest in foreign securities? A. Pardon me, Mr. Burling. Please don't use the word "transfer" of securities, because they could not transfer these securities.

Q. Isn't an abandonment a transfer? Wouldn't it transfer from A to B? A. By waiving the right, the right coming at the end.

Q. And by the abandonment, the interest in the property moves from Wilhelm and Marta to Fritz, doesn't it? A. Well, if you want to call it that it moves, yes, sir.

Q. Isn't that a transfer? A. No, it is not a transfer, because the statutes say a transfer can be done—I am not too much impressed by the words of the statute—but we can perfectly agree that we have the right, and by the German courts it would be considered void under the foreign control.

Q. So there isn't any doubt in your mind, is there, that under the hypothesis that a valid usufruct arose and that the shares were in a box in Zurich and the key to the box was in the hands of Wilhelm's agent, then Fritz and Marta

could not waive or abandon the usufruct without a license? A. Under German law, no.

Q. That is what you are testifying about, as an expert in German law. And if they purported to waive, under the hypothesis I have given you, that purported waiver
549 would be void? Isn't that true? A. Yes.

Q. Is it your opinion, Doctor, that in considering the question of whether a waiver had taken place, a German Court would take into consideration the fact that the two people who had the capacity to waive, Wilhelm and Marta von Opel, had both testified in the particular proceeding and neither of them had mentioned—and this is a hypothesis—neither of them had mentioned that waiver? Would the fact—

Mr. Boland: I didn't get your question, Mr. Burling. Would you mind restating it?

Mr. Burling: Yes. My question is—

Mr. Boland: What is your assumption, again, please?

By Mr. Burling:

Q. My assumption is that a German Court is endeavoring to determine the fact whether or not Wilhelm and Marta von Opel waived or abandoned their usufruct, of course again assuming a usufruct validly arose.

My question is, on the further assumption that neither Wilhelm nor Marta von Opel testified—and both of them were called in the case, but neither testified in any way—that they had in fact waived, would the Court consider the failure of the two witnesses who could possibly testify to a waiver, to testify to that effect, as being an im-
550 portant fact?

Mr. Boland: I object to that question, Your Honor. I don't see that it is necessarily connected to anything Dr. Kronstein has testified to.

The Court: I am a little afraid it may be outside the German law, Mr. Burling.

Mr. Burling: May I have a moment, please?

The Witness: Your Honor, I would like to have the right to make a little statement. Mr. Burling has, I believe, attacked my honor. He made an implication which I cannot accept silently. I believe that Your Honor cannot have the impression that I made biased testimony.

The question in regard to my payment is especially, I believe, improper, since the Government knows very well that I do not accept more than a Government expert; that I took this case and I told both parties that I want to be perfectly—

The Court: Mr. Kronstein, there isn't any testimony reflecting on your honor before me, and I assure you I won't draw any conclusions from it. So you needn't bother about that.

Mr. Burling: I would like to state, Your Honor, my purpose in seeking to find out about the funds related to something wholly unrelated.

The Court: I got the drift of that.

551 He was talking about another point, on the money.

Mr. Boland (to Mr. Burling): Have you finished your questioning?

Mr. Burling: May I have just another moment, Your Honor?

I have no further questions.

Redirect Examination

By Mr. Boland:

* * * * *

554 Q. Doctor, are you familiar generally with the foreign currency regulations which were in effect in Germany in 1931? A. Certainly.

Q. Would you give us a slight detail on your familiarity with such regulations? A. The law practice between 1931 and November, 1935, when I left, was unfortunately up to 90 per cent connected, at least in my office, connected with foreign exchange control.

Q. So that you would say you were extremely familiar with the foreign exchange regulations? A. I don't want to say "extremely familiar". I am very well familiar with the problem.

Q. Would you direct your attention again, Doctor, to Plaintiff's Exhibit 5, and state whether or not there is anything set forth in that agreement which violates in any way any foreign currency regulations which were in force either as of October 5, 1931, or—

Mr. Boland (to Mr. Burling): What date are you using in your assumption? November 24?

Mr. Burling: No; my assumption is a date after Fritz returned—November 9.

By Mr. Boland:

555 Q. Or on November 9, 1931? A. This agreement written here was perfectly lawful under foreign exchange control and, as far as I can see, until the control statute number, I believe, 53, of the Military Government, overruled the currency statute and substituted a new statute for it.

Q. And would you explain to the Court exactly why this was legal, under German foreign currency regulations? A. The object of the gift were German shares, shares of a German corporation. Under German law, shares are personal property. The rules of currency decrees do not cover this property, and for good reasons.

Q. So that the main factor in this case is that it deals with the transfer of German bearer shares? A. German bearer shares.

Q. And that is why it was not within the foreign currency regulation? A. Yes.

Q. Addressing your attention now to Plaintiff's Exhibit 7, which purports to be a letter from Dr. Hachenburg, in which he discusses the problem, what conclusion does he come to, Doctor? A. The same conclusion, that the procedure is lawful.

Q. Thank you. Yesterday, during Mr. Burling's assumptions, he asked you a question as to taking the
556 gift agreement itself, October 5, 1931, as to whether the only thing left which would preclude the immediate establishment of a right in rem, as he put it exactly, "No other defect except delivery remained to the establishment of an immediate right in rem"? A. Yes.

Q. I think ultimately your answer was yes. That answer is based upon the assumption, is it not, that you interpret the language of the contract to create an immediate right in rem; that the intent of the parties was to establish an immediate right in rem? A. Would you repeat this question? I didn't get the question.

Q. Mr. Burling asked you whether on the basis of the gift agreement itself, whether the only defect to the immediate establishment of a usufruct was delivery, and I believe your answer was yes. A. I said, without this conveyance contract, the Dinglicher Vertrag, there can be no Niessbrauch. If there would be such a conveyance in the contract, then I wouldn't suggest that they here establish rights in personam, but I would certainly suggest they establish a right in rem.

Q. Yes, sir. Yesterday Mr. Burling also gave you the case of the Rembrandt. I am not sure who gave the Rembrandt to whom, but at least it was in issue for quite some time. And as I recall the case, it was that of the do-
557 nor who gives the Rembrandt to a donee, with the understanding that the picture will return upon the happening of certain conditions. A. Yes.

Q. Under such a case, Doctor, and before the happening of the condition, would the donee be free to transfer good title to a third person? A. Yes.

Q. And where does that leave the donor? A. He would have a claim for damages.

Q. He would have merely a claim for damages? A. Yes.

Q. So that until the happening of the condition, the donee has full power, full title, and full power to dispose of the particular object of the gift? A. Yes.

Q. Do you believe that the Rembrandt analogy has any relationship to the case at bar, that is, using October 5, 1931, Plaintiff's Exhibit 5? A. If you take this contract, you have the provision that in case of Fritz von Opel's death without legitimate issue, and the fact that he predeceases his parents, the gift will become void.

You have furthermore this provision that the
558 shares should be sold or exchanged against other property.

You have furthermore no right in rem established by the usufruct.

And if you take that all together, it was a completely uncertain and undefinite and unspecified property.

If I would take the position, the other position, because in my direct I tried to interpret the contract, to give the Opel parents as many rights as possible under this language, and I suggested that this provision had established a right against Fritz von Opel's estate in case these two contingencies occur, for the return of the remainder.

If you interpret this section here as having in effect as a right in rem, then it has absolutely no effect the moment the first shares are sold, and it loses any effect then whatsoever.

That was the reason I tried in my interpretation to give the most possible number of rights to the people who make this contract, with their intention, following their intention.

I made this suggestion, as I believe, in the interests of Mr. Burling.

Q. So that your testimony is to the effect that this does not affect the passage of title? A. No.

Q. And, number two, that it merely creates a right
559 in the donor in the estate of the donee, if the son predeceases both the mother and father, and dies without legitimate issue? A. Yes, sir.

Q. I believe it has been stipulated that the father has died. Assume, Doctor, it is established in the course of this case that the mother, the co-donor, so to speak, is 77 years old, and assuming further that the son is in his forties, as a German lawyer and looking at this gift instrument what value would you attribute to the rights of the mother at this particular time? A. I am afraid—

Q. I don't mean dollar wise, Doctor. A. I am afraid it goes a little bit beyond my possibility of an expert's testimony.

Q. I think we both agree they were not very much.

Mr. Burling: I would like to object, on the ground that the relevant date is the date of vesting, and not today.

The Court: I think that is true.

Mr. Boland: That is all, Your Honor.

Mr. Burling: I have two or three questions, if Your Honor please, arising out of the redirect.

The Court: Very well.

* * * * *

564 Mr. Gallagher: I would like to now offer the vesting orders, which have been in custody of plaintiff's counsel. Give them different numbers.

(The documents referred to were marked Plaintiff's Exhibits 48-A to 48-E for identification.)

Mr. Gallagher: Mr. von Opel, take the stand.

Thereupon—FRITZ VON OPEL was called as a witness and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Gallagher:

Q. Mr. von Opel, you were in the courtroom the day that this proceeding began, were you not? A. Yes.

Q. At that time you heard Mr. Burling—

The Court (interposing): You better give his full name.

By Mr. Gallagher:

Q. Your name is Mr. Fritz von Opel? A. Yes, sir.

Q. And you are the owner of the stock of the Uebersee Korporation? A. Yes, sir.

Q. You were in the court on that opening day of this proceeding, were you not, Mr. von Opel? A. Yes.

565 Q. And you heard Mr. Burling's opening statement at that time; is that true? A. Yes, I did.

Q. I would like to refresh your recollection for a moment as to what he said, on page 28 of the opening statement:

"As I have said, the regulation came out on October 2nd. On that very same day Fritz went to Mannheim and consulted Dr. Hachenburg—and I agree with Mr. Gallagher's statement that he was one of the most eminent lawyers at the German Bar at that time. He agreed to prepare a draft of an agreement which would put the legal title in the name of Fritz von Opel. And he did mail it the next day, October 3rd. And the calendar will show that October 2, 1931, fell on a Friday. So Hachenburg mailed his draft on October 3rd, on a Saturday; and the presumption would be that it was received in Wiesbaden Monday morning, October 5. He also said he would look up some tax problems associated with this transfer.

"Incidentally, under the schedule of the escrow agreement, Wilhelm von Opel was to receive $3,700,000 if he put the stock to General Motors at this time, and I think it is not disputed that that sum equalled approximately half of the entire fortune of Wilhelm von Opel.

566 I might interpolate: That is disputed.

"It is our contention, of course, that the father and the son both understood it was not a gift of half of Wilhelm's estate to the son, but merely that this was a way in which the family was going to go around the foreign exchange regulations, by purporting, by feigning a transfer to the son, so that he would hold it immune to the foreign exchange regulations.

"We will prove through the words of Fritz von Opel himself that he and his father were on exceeding bad terms at the time of this gift and, in fact, at all relevant times, the father and son were not at all friendly.

"The significance of the days of the week is that although Hachenburg was one of the most distinguished lawyers of the German Bar, and said he would report on tax matters on Monday—and here my friend I think was in error; it was not Fritz von Opel on behalf of his father, but Wilhelm von Opel, who cabled the general counsel of General Motors, asking if he would be in New York, and saying that either the father or the son would come to New York, sailing the following Wednesday, to confer with him.

"We contend that the agreement which bears the

567 date October 5 was not signed on that date, but that, on the contrary; what happened was that Hachenburg's letter was received on Monday. They knew that the Europa was sailing from Bremerhaven two days later, on October 7, and that it would be necessary for either Fritz or his father to leave for Bremerhaven the very next day, on the 6th, to get on the boat.

"So they knew there just wasn't time enough to look into these problems."

Now, Mr. von Opel, for how many days did you and your father discuss Dr. Max Hachenburg's suggestions? A. We discussed it for several days.

Q. I will ask you: On the date October 2nd, three days before the Hachenburg draft, Plaintiff's Exhibit 8 was received, you were given Plaintiff's Exhibit 9, which the Government has admitted was given to you on that date, on October 2nd; is that not a fact? A. Yes, it is.

Mr. Burling: I object. I did not object during the examination in chief of Dr. Kronstein to the fact that leading questions were used because of the complexity of the problems. I do not think even if this is an equity court that Mr. Gallagher should be allowed to lead—

Mr. Gallagher (interposing): I will reframe the question.

568 Mr. Burling: This is not a hostile witness.

The Court: I agree with you on that.

Mr. Gallagher: I will reframe the question.

By Mr. Gallagher:

Q. It has been stipulated by the Government, Mr. von Opel, that Dr. Max Hachenburg gave you this draft, Plaintiff's Exhibit 9, on October 2nd, which they state is the Friday preceding the Monday on which Plaintiff's 5 was purportedly executed.

I will ask you: Did Dr. Hachenburg give you that letter? A. Yes; certainly.

Q. That draft? A. Yes.

Q. Now, I will ask you: Did you have any discussions with your father within the light of the suggestions contained in that draft? A. Yes; definitely.

Q. Did you discuss—at what time did you discuss them? A. I came home in the evening of the 2nd. It is only about an hour or an hour and a half drive from Mannheim to Wiesbaden. So that same night I discussed it with my fa-

ther, also the next day and the following day, what is called in English, fundamental considerations forming the basis of Dr. Hachenburg's final draft.

569 Mr. Gallagher: I would like at this point if Your Honor would refresh your recollection as to 9 for a moment, and then I will commence with Mr. von Opel's interrogation. Will you compare it with 8? 8 is the one received Monday, and which is stipulated by the Government. 9 is the one they themselves stipulated was given to Fritz three days before, and which has been testified to by the expert as containing the same information as in Plaintiff's Exhibit 7?

You will note that Dr. Max Hachenburg in the second line states: I gave the memorandum to Fritz.

The Court: Go ahead, Mr. Gallagher.

By Mr. Gallagher:

Q. So, if I understand you correctly, your father and you had at least two days and an evening in which to discuss the suggestions of Dr. Hachenburg, which appeared later in a formal draft of a deed of gift; is that correct? A. Yes.

Q. Now, to return, Mr. von Opel, where were you born? A. In Ruesselsheim.

Q. In what year? A. May 4, 1899.

Q. Where is your present residence? A. St. Moritz, Switzerland.

Q. When did you acquire that residence? A. I bought the house in 1933 and rebuilt it, and made St. Mo-
570 ritz my permanent residence in 1934.

Mr. Ingoldsby: A little louder, please.

By Mr. Gallagher:

Q. A little louder, Mr. von Opel.

When did you give up your residence in Germany? A. In December, '29, when I left for the United States.

Q. Of what country are you a citizen? A. Liechtenstein.

Q. And when did you become a Liechtensteinean citizen? A. In November, 1939.

Mr. Gallagher: Now, Your Honor, I wish to offer a stipulation between the defendant and the plaintiff with respect to one, Dr. Joseph Henggler, who represented Mr. von Opel in obtaining Liechtenstein citizenship, and the stipulation states that if Dr. Henggler had been called as a witness, which we proposed to do in Europe, this is the testimony he would have given.

Will you identify that?

(The document referred to was marked Plaintiff's Exhibit No. 49 for identification.)

Mr. Gallagher: This is Plaintiff's Exhibit No. 49. Would you look at that briefly, Your Honor?

I now offer that, Your Honor.

Mr. Burling: I think I stipulated that that wit-
571 ness would so testify but I didn't stipulate as to the admissibility.

Mr. Gallagher: That is correct. The Judge will see that, Mr. Burling, in the stipulation.

Mr. Burling: However, I make no objection.

The Court: All right.

(The document previously marked for identification Plaintiff's Exhibit No. 49 was received in evidence.)

Mr. Gallagher: I might state, Your Honor, it has been stipulated further that he is a Liechtenstein citizen.

By Mr. Gallagher:

Q. Where was your domicile at the time you acquired or became a Liechtenstein citizen? A. In Switzerland.

Q. Did you ever file with the proper authorities in Germany any application to retain your German nationality? A. No, I did not.

Q. When did you come to the United States for the last time? A. In the spring of 1940.

Q. And would you state for what reasons you came to the United States at that time? A. I had several reasons.

Q. A little louder, please. A. I had several
572 reasons.

One of the reasons was that in 1939 I had received a certain mobilization order, meaning that I had to report back to Germany for military service. I was at this time not a Liechtenstein citizen, and I was very much afraid that if the German armies would enter into Switzerland that I might get caught and shot.

This danger was especially great in the spring of 1940. At this time the so-called phony war was going on, and the Germans were sitting in front of the Maginot Line, and everybody would expect they would go through Belgium or Switzerland, around this line.

Q. After you arrived in the United States in 1940, what work did you engage in? A. I came practically every year once or twice to the United States. In the summer of 1939 I could not come. I had a compound leg fracture, so I was already a year late, and I was on the board of several American corporations, and I wanted to oversee this business.

Q. When you speak of several American corporations, are you speaking of corporations owned, the stock which was owned by Uebersee? A. Yes, I do.

Q. Did you limit your work to these corporations? A. No. I began some new enterprises. I established a small finance corporation.

573 — Q. What was the name of that? A. Westminster Finance Corporation, and I also had an interest in a machine shop.

Q. Would you state the name of that? A. It was called the Ergo Machine Works.

Q. Will you state what product or products did the Ergo Machine Works make? A. At the time I acquired it, they produced molds for plastic manufacturing, and it had subcontracts for airplane manufacturers, especially for aeronautics.

Q. Were those products ultimately for use in plane production? A. Yes, you can say that. In the beginning, I think most of it went to England.

Q. Were there any patents involved in the Ergo Machine Works proposition? A. I gave them one of my patents. I at this time had designed a fastener. I had read in the newspapers that fasteners were a bottleneck.

Q. What do you mean, a fastener? A. Small metal pieces where several sheets of metal, flaps, or cowling, are fastened together, and on every airplane they have several hundreds of them.

Q. You designed that? A. Yes, and at this time only one fastener existed, the Tods fastener, invented by
574 a Russian who came here in '28, and, in my opinion, it was poorly designed and expensively designed, and I thought I did it somewhat better.

Q. What was done with that fastener patent? A. I offered it to the Air Force, and it was taken on a shakedown test in Wright Field, and it was a 40-hour test, and it stood up as well as the other one, and it was so much lighter and less expensive, and they wanted me to go ahead with it and manufacture it.

Q. Do you know whether or not these fasteners were used in airplane production? A. The Air Force wanted Ergo to build some of them. In the meantime, I had been interned, and Ergo had been taken over by the Alien Property Custodian, and they refused to cooperate, and the fastener was then built by the millions by car-manufacturing and bus companies.

Q. What happened to the Ergo Machine Works that you are speaking about? Is that still active today? A. No; that was liquidated.

Q. Who was it liquidated by? A. It was liquidated. I never could quite understand why it was liquidated because at this time I was working on another process, a torch process, in cooperation with the War Production Board, and they even had given me A-1 priority so I could build my research equipment, and the tests
575 came out better than we thought, but in the meantime the APC took over and sold the whole thing on the auction block, and that was done over the protests of the War Production Board representatives.

Q. Now, do you know how much they got for it? A. I had invested, if I remember correctly, about a hundred and ten or a hundred and twenty thousand dollars in that, and they got about fifty thousand dollars out of it.

Q. What was your estimate of its real worth? A. I would not have sold it for half a million because it was a patent matter pending, and we had running contracts, and we had just begun to make profits.

Q. Now, Mr. von Opel, you stated the fact you were interned.

Do you remember approximately when you were interned? A. In February, '42.

Q. While you were in internment, did you continue your patent research? Did you go into it immediately? A. Not the first few months.

Q. Was there any reason for failing to do that? A. Yes, because we were kept in quite miserable circumstances.

Q. Where were you kept? A. In Miami, in the so-called Professional Building. It was only small rooms and 60 or 70 men in it, and it was rather unpleasant there.

576 Q. When did you, or did you commence further patent research? A. I was then transferred to Canton, Texas, and there I had room for myself, and I could go to work again.

Q. Did you remain in Texas thereafter or were you again transferred? A. Only for about half a year or, I think, about approximately a year.

Q. Where were you transferred then? A. Then I was re-transferred to Miami.

Q. While you were in Miami what work did you do while you were in internment? A. I worked with the Army Intelligence in Miami.

Q. Who did you work with? A. I remember in particular a Colonel Mettler. He was an Ordnance officer, and there was some work I was again interested in.

Q. In this connection, did you have occasion to confer with scientists and others at the request of the Army? A. My work consisted of, so to say, of several parts, partly covering new devices, partly they gave me a problem and I worked on it, and in other instances they had solutions and they asked me to review some and give my opinion on it.

Q. Now, did you continue to remain in Miami or
577 were you again transferred? A. The Army tried to keep me there, but the Immigration authorities wanted to send me back to Texas, but after investigation it was found it wasn't quite safe there, and I wasn't transferred.

Q. Why weren't you safe there? A. It was a Nazi camp.

Q. The Texas camp was a Nazi camp? A. Yes.

Q. Where were you transferred? A. I was transferred to New Orleans.

Q. What kind of camp was it in New Orleans? A. It was called, a so-called Jewish camp because most of it were German refugees.

Q. After your release from internment, did you do any particular work for the Army? A. Yes, I did.

Q. What was it? A. They asked my opinion on some matters concerning the German automobile industry, and

industrial rebuilding in general, and I wrote several memorandums for them.

Q. Mr. von Opel, where were you educated? A. I went to school in Meintz, in high school, and as you call, as you say junior college, and then I went to technical hoch schule, which means the Institute of Technology
578 in Darmstadt.

Q. What degree? A. I was a graduate of mechanical engineering.

Q. What work was your family engaged in? A. My family, four branches of the family, originally four brothers, owned the Opel Automobile Company.

Q. What was the Automobile Opel Works? A. It was the biggest in Germany, if not the biggest concern in Europe, and after I had goten in, the biggest bicycle plant in the world.

Q. Were you ever connected with the Opel Works? A. Yes; definitely.

Q. For what period of time? A. It is hard to say because we were living right in the factory grounds. The factory got larger and larger and built around the house of my father.

Q. And the house was in the center of the plant proper? A. Yes, sir.

Q. While you were in the Opel Works, what were your duties in the plant in general? A. While I was still in high school, my father asked me to go through the regular routine of work, up through the ranks, and I was an apprentice there, and kept busy with all kinds of machine tools, and learning the trade, and even before graduation, I was already connected with the factory.
579 At first I had a position as foreman, and then superintendent, and later on as manager. I started in the factory plant, in the bicycle plant, and my father offered for me to go to the body division, but I could see at that time in the bicycle division, it was kind of neglected as part of the factory—

Mr. Burling (interposing): We cannot hear the witness, Your Honor.

Would you speak a little louder?

Mr. Gallagher: Speak louder, please.

By Mr. Gallagher:

Q. Now, do I understand you then, that the nature of your work took you into all branches of the factory? A. In the beginning I was mostly in the bicycle plant, busy with the bicycle plant, and at the time I took over we made 300 a month, and after two years, it was 1,000, and after four years, 3,600; twelve times the former production.

Q. Did you also work in the automobile part? A. Yes, sir. My father used me as a trouble shooter, so to say, in all kind of things, and later I was going to the truck division, and later on as designer of the big passenger cars, which was a special division.

Q. Now, in addition to the work in the plant proper, did you do any work for Opel outside of the plant? A. Racing. My family had always done it in Germany. It
580 is different from here now nobody pays any attention to any racing, but all through Europe the automobile sales are based upon racing research, and we had to go into that, and this kind of thing at this time.

Q. Did you operate Opel cars in these races? A. Yes, sir.

Q. The Opel name appearing on it? A. Yes; certainly.

Q. In addition to the standard type car, did you develop or drive any other type of car? A. I designed the first eight cylinder in line. It was quite a success at the Berlin exhibition of 1928.

Q. Did you have anything to do with rockets? A. Yes. I may say so. I started this whole development, more or less. I was the first one to build it into an automobile, and the first one to design and fly a rocket airplane.

Q. Did you drive a rocket car, too? A. Yes, and I also built the first jet engine.

Q. The first jet engine? A. Yes.

Q. Now, Mr. von Opel, directing your attention to the year 1928, what was the legal setup for the plant? Was it a partnership or was it a corporation? A. Up to 1928 it was a partnership. In 1928 Adam Opel was in-
581 corporated with 60,000,000 reichsmark capital.

Q. Now, after it was incorporated, what position did you then have with the plant? A. I was what is called—

Mr. Burling (interposing): Before you show it to the witness, will you show it to us?

Mr. Gallagher: It is in German.

Mr. Burling: I assume I know what you are going to use it for, but I must object to it with the name von Opel struck out.

Mr. Gallagher: I haven't offered it. I am going to ask the witness to identify it.

By Mr. Gallagher:

Q. Will you state what this document is, Mr. von Opel? A. Yes, sir; the so-called notarized copy of the registration, the corporate registration of the State of Prussia, and it refers to the Adam Opel Korporation in Wiesbaden.

Q. Does it have any reference to you in there? A. Yes. It says: Vorstand, which means manager, and it states my name, and I was the only person, and I could sign for the enterprise solely.

Q. What was meant by that title that you mentioned in German, comparable to the United States? A. It is called vorstand, which means sole manager here,

582 Mr. Burling: I move to strike out the testimony on the ground that a description of the document

is unnecessary if it is admissible, and improper if it is inadmissible. Fritz von Opel is underlined in red, and it is struck out.

By the Court:

Q. Tell me from your memory the position you had and what it meant. You remember what position you held at that time? A. Yes.

Q. Just tell us. A. Vorstand. I was vorstand for Adam Opel, A.G.

My father at the time was chairman of the board of directors, and my uncle also, but under German law no member of the board can be an officer of the corporation, and I was the sole officer.

By Mr. Gallagher:

Q. What was your salary at this time? A. This is the year 1928 and '29, and I got 4,000 marks a month, and three-quarters of one per cent of the net earnings.

At this time the corporation was making between twenty and thirty million reichsmark, and my total income was about two hundred to two hundred and fifty thousand marks.

Q. At that time did you have a contract with
583 the plant? A. Yes, I had a yearly contract.

Q. A yearly contract? A. Yes.

Q. Now, in '28, were negotiations commenced with General motors to sell the Opel plant? A. Yes.

Q. And did these negotiations result in a sale? A. Yes; after half a year.

The Court: 1928?

Mr. Gallagher: No; this will be '29. That was the sale. They commenced in '28, and the sale was in '29—April of '29, it has been identified.

By Mr. Gallagher:

Q. Now, at the time of this sale did you have any conversations with your father? A. Yes; I had many conversations concerning the sale.

Q. What was the nature of those conversations? A. I was the only one of the entire family who was against the sale.

Q. Can you state the reason why you were against it? A. Because it was my life business. I was educated for it, and I certainly didn't want to lose it.

Q. What was the result of the conversations you had with your father? A. He at the time told me he
584 would later on, if I so desired, he would set me up in business independently, but the trouble was, in this sales contract I was excluded from using my own name. That was part of it, so the Opel name could not be used by the Opel family in any competitive enterprise with General Motors as for a period of ten years.

Q. So, therefore, you were excluded from using your name to advertise products? A. Yes.

Q. Well, after General Motors had assumed ownership and control of this plant, what position did you occupy then? A. I still was manager, and then an American was appointed co-manager, and we were assigned jointly.

Q. Was this a satisfactory status from your viewpoint? A. No.

Q. Will you state why not? A. It was always a clash of opinions.

Q. Do you remember any? A. The American management had entirely different viewpoints on all kinds of things, but to give you a small example: At this time General Motors promoted Opel motors, and the very first thing they did was to scrap the eight cylinder in line because they thought that the design, because of heat expansion and so forth, was no good.

Q. We have eight cylinder in line motors in many
585 cars today? A. Yes, you could say so.

And they also changed the policies in regard to the bicycle dealers, and after three or four years, this whole business was entirely wrecked and they had to give it up.

Q. Did you have any discussions with your father about these difficulties with the General Motors staff? A. Yes; certainly. He had the same difficulties.

Q. What was the result of these discussions with your father? A. I told him that I would like to quit right away, and start a shop of my own somewhere.

Q. What was his reaction to that? A. He insisted that I should try to go on, and I would get my position back after a certain time, and it was just a matter of time of getting along with them, and I should go to America and study their methods, and if I still would find and decide that would not do, I would not like to go back in the corporation, he would then provide for me.

Mr. Gallagher: Would you like to recess at this time, Your Honor, because we are now about to set sail for America.

The Court: All right.

(Thereupon at 12:30 o'clock p.m., the luncheon recess was taken until 2 o'clock p.m.)

586 AFTER RECESS

(The trial was resumed at 2 o'clock p.m., at the expiration of the recess.)

Accordingly, FRITZ VON OPEL resumed the witness stand pursuant to the luncheon recess and testified further as follows:

Direct Examination (Continued)

By Mr. Gallagher:

Q. I think when we left for the recess, that you had stated after further discussions with your father in 1929, you left for America.

Let me ask you this: At that time were you married or single? A. I just had married in October, '29.

Q. Where did you live with your bride at that time? A. I took an apartment in Wiesbaden.

Q. And after you left for America, did you maintain that apartment? A. No; I gave it up.

Q. Did you maintain any home there? A. No.

Q. Did you file any papers with respect to your departure? A. Yes; certainly.

587 Q. What was the nature of those papers? A. It is called abmeldung, meaning registration of departure.

Q. Does that state you are leaving the country, or what else? A. It says—you always have to register when you move from one place to the other in Germany, but abmeldung means I was registered for leaving for a foreign country.

Q. When you arrived in America, where did you live? A. I worked in different units of the Chevrolet Corporation. First I worked in the foundry in Saginaw, then in the forging plant, in Detroit, and in Toledo, and also the motor plant in Flint, Michigan.

Q. Did you maintain an apartment during your stay in America? A. No, I was living in hotels.

Q. Living in hotels? A. Yes, sir.

Q. How long were you in America in toto? A. For about a year.

Q. After you left America, where did you go then? A. I went to Antwerp, Belgium.

Q. While you were in Antwerp, did you have occasion to go further to your father's home and have dis-
588 cussions with him? A. Yes. I was working with the General Motors Export Division in Antwerp, and I was staying in Brascard; near Antwerp. I rented a house there for a year.

Q. Where was your legal residence at that time? A. My legal residence was in Belguim. I had quite some difficulty in getting it.

Q. You stated you had some discussions with your father during the period that you were living in Antwerp? A. Yes.

Q. Directing your attention to the spring of 1931, and this is shortly after you had returned from America, did you have any discussions at that time with respect to your father's statements to you in 1929 about staying with General Motors for a while and if it didn't work out that he would set you up in business?

Mr. Burling: I again request that counsel not lead the witness. After all, this is Mr. Gallagher's witness.

Mr. Gallagher: Strike the question.

By Mr. Gallagher:

Q. You stated you had discussions with your father during the spring of 1931? A. Yes, sir.

Q. Will you state the nature of those discussions? A. It was along that same line, and I told him now another year has passed, and I really think it is getting
589 time I get settled for myself.

Q. As a result of those discussions was any action taken by you? A. Yes.

Q. Will you state what that action was? A. At this time I wanted to start there an international patent exchange, swapping patents between Europe and America, and I

friend of mine was also interested in it, and I acquired an option on a corporation for this purpose.

Q. Would you state the name of that corporation? A. It was Overseas Finance Corporation.

Q. Now, did you have an agreement with or discussions with your father about procuring that option? A. Oh, yes, definitely because otherwise—

Mr. Burling (interposing): May I inquire of counsel: Is Overseas Finance Corporation the same thing as Uebersee Finanz Korporation?

Mr. Gallagher: Yes, it is.

Mr. Burling: They are identical?

Mr. Gallagher: Identical.

Read the question.

(The last question and answer were read by the court reporter.)

A. (Continued) Otherwise, I would not have been able—
I didn't have money of my own and I would not have
590 been able to acquire the corporation.

By Mr. Gallagher:

Q. State what the nature of the discussion with your father was about that option. A. Yes. He told me, he said he was willing to give me a loan of about three and a half million Swiss francs.

At this time there was no foreign currency control in Germany, and he was free to dispose of money he had in Switzerland.

Q. Now, did he make those funds available to you in the spring of '31? A. No. I had an option running for about a year until, I think, it was from April until December, and I didn't intend to return to Switzerland, to go to Switzerland definitely before the end of the year, so I just waited before I exercised the option.

Q. Did he participate in the option in any wise, by way of guarantee or otherwise? A. Yes; that is what I just have told. He promised me to put at my disposal some

money necessary to fulfill my obligation to finance this corporation.

Q. Now, directing your attention to the summer of 1931 —strike that.

Was there any action taken immediately at that time with respect to going forward with exercising this
591 option? A. No, but all of a sudden the foreign funds control came in, and he had to report to the German authorities, and he was also told to file application, that he could not dispose of the funds we had promised.

Q. I show you a letter of September 9, 1931, identified as Defendant's Exhibit No. 1, a letter to the Revenue Office in Wiesbaden, from your father, together with an exhibit identified as Defendant's Exhibit 1, an enclosure attached to Defendant's Exhibit No. 1, and ask you if that is the application that your father filed with the Foreign Currency Control authorities with respect to the Swiss francs? A. That seems to be the translation of it.

Q. That seems to be the translation of it. A. Yes. That is the translation of this application.

Mr. Gallagher: Have you seen this, Your Honor?

The Court: I do not think I have.

By Mr. Gallagher:

Q. Now, during that period of August, 1931, and September, 1931, you were still living in Antwerp; is that correct? A. Yes, sir.

Q. Did you have any further discussions with respect to the general economic situation in Europe at that time and foreign currency legislation? A. Yes, with many people. The situation got worse and worse, and
592 I finally decided to go to Ruesselsheim to see my father about it.

Q. Did you go to Ruesselsheim to see him? A. Yes.

Q. Did you have any discussion there with him? A. Quite a long discussion.

Q. What was the substance of that discussion? A. I just went over all these former discussions again, and I gave him all my reasons why I didn't want to stay with General Motors, and why he should look after me now. Especially I was afraid that we would not get to transfer all these Swiss francs to me permitted.

Q. You are referring to Defendant's Exhibit No. 1? A. Yes.

Mr. Gallagher: Will you mark these?

(Two documents were accordingly marked as Plaintiff's Exhibits Nos. 50 and 51, for identification.)

By Mr. Gallagher:

Q. I show you now a cablegram, dated September 16, 1931, stamped September 17, 1931, addressed to John Thomas Smith, vice president, General Motors, and I will ask you if you sent that cable, which bears the signature, Fritz von Opel, Geconanver, Antwerp? A. That was the cable address of General Motors, Antwerp. I sent
593 it from there.

Q. Was this sent as the result of a discussion with your father? A. Yes.

Q. I now show you Plaintiff's Exhibit 51, a cable dated September 21, 1931, addressed to Fritz von Opel, Geconanver, Antwerp, and signed by John Thomas Smith, and ask you if you received that cable? A. Yes; that was his reply.

Q. This was the reply to Plaintiff's Exhibit 50? A. Yes.

Mr. Gallagher: I now offer these in evidence.

(The documents previously marked for identification Plaintiff's Exhibits 50 and 51 were received in evidence.)

By Mr. Gallagher:

Q. Did you have any further discussion with your father now after the forwarding and receipt of these answers from John Thomas Smith? A. I went to Buesselsheim or Wiesbaden at the end of September and looked into this so-called escrow agreement.

Mr. Gallagher: Let me have number 6, Plaintiff's No. 6.

By Mr. Gallagher:

Q. You are referring to Plaintiff's Exhibit No. 6,
594 which has previously been introduced (handing a document to the witness)? A. No; that is not it.

Mr. Gallagher: Strike that. I am sorry.

By the Court:

Q. I want to take you back a minute. Where was this Overseas Finance Company, Limited. Where was that organized? A. It was organized—it was a Swiss corporation.

Q. A Swiss corporation? A. Yes; in Zurich, Switzerland.

Q. When did it come into existence? A. It was founded in 1922.

Q. And what was the purpose of that company? A. They were doing financial transactions in general. It belonged to a friend of mine and it had become dormant, and they wanted to use it for other purposes.

Q. Financial transactions where? A. I could not tell you. I didn't own the corporation at the time.

Q. I thought you said financial transactions— A. Yes; financial transaction, but I don't know the details of those financial transactions.

Q. But the home of the corporation was in Zurich, Switzerland? A. Yes; it was a Swiss corporation.

595 Mr. Gallagher: It has been stipulated that the corporation is Swiss, Your Honor.

The Court: Now, I understand from Mr. Burling's question, that you came to the point where they became merged, merged in the plaintiff's corporation?

Mr. Gallagher: No, that is not quite so. The option was never exercised.

The Court: I understood him to ask you the question if this Overseas was the same as the plaintiff.

Mr. Gallagher: It is.

The Court: Are you going to bring that out later and in what respect?

Mr. Gallagher: Yes, Your Honor.

The Court: All right.

Mr. Gallagher: I might explain that Mr. Ingoldsby suggested, and I think it might be proper to explain to Your Honor that this option agreement, giving the parties the right to sell, or buy Overseas, was never exercised because in our proof, subsequently, we will show the father never did obtain a license with respect to the Swiss francs, and therefore the option was ended.

The Court: All right. I was not following it. I have it now.

By Mr. Gallagher:

Q. Now, I believe you stated that on arriving in
596 Ruesselsheim or Wiesbaden the end of September or the beginning of October, you became aware of the escrow agreement; is that correct? A. Yes. If I remember correctly, I told you my father a day or two previously had sent me a copy.

Q. And that is Plaintiff's Exhibit 3, a translation of it, or is that the English? A. No, it was—it seems to be a copy of the original.

Q. Now, after discussing this escrow agreement, as you have stated, with your father, what action did you next take? A. I read the foreign currency regulations, and I found out, at least as far as a non-lawyer could say, that it was permissible for him to make me a gift of these Opel shares, and that is what I asked him to do, and I gave my reasons for it.

Q. Would you state again the reasons, Mr. Opel? A. First I told him that the entire family of my seven sisters and cousins were taken care of, and that I was the only one who had not a penny to his name, and I had given up my contract, which had paid me a quarter of a million marks a year, and I said I would not like to return to Germany, and that this, apparently, was the last chance for him to set me up outside of Germany, and I also told him
597 that, after all, this contract would not mean very much, as if it was exercised by General Motors, he would get reichsmarks and he had plenty of reichsmarks, and he would have to keep them inside of Germany, whereas for me, as I was called deyisen auslander, I could get that in dollars and stay in America or Switzerland—anyhow, outside of Germany.

Q. How many reichsmarks did your father have in Germany at the time? What was his wealth at that time, forgetting about the option? A. Yes. I think he declared property in Germany, and you have to declare your property in Germany every second year, and at this time I think it was around twenty-one or twenty-two million reichsmarks.

Q. That was the tax assessment value? A. That was only so to say taxable value, and the real value was considerably higher.

Q. What would you say the figure approximately would be? A. It depends on the amount of real estate. I would say at least twenty-five million, if not more.

Q. In the course of this discussion with your father about the escrow agreement, and the situation that you have just

pointed out, was any reference made at that time about the Swiss franc situation and his application? A. Yes. That is what I told him.

598 I said to him: If you had given me the Swiss francs outright in April, I would not be here. They would be mine, but now this regulation came in between and the only thing you promised me was a loan, and even if we get permission, I would have to return that money after a year or two, and it would be no good to me anyhow.

Q. Now, as a result of those discussions with your father, what steps did you take? A. He told me, he said if I would prove to him by a competent lawyer that this gift was legal, he would make it to me, and a number of provisions.

Q. Did he make any suggestion as to whom you should see? A. Yes. Our family lawyer at the time was Dr. Hachenburg, and he even insisted that I should pay for this visit to Hachenburg.

Q. He even insisted what? A. That I should pay for the visit to Hachenburg; I should pay the lawyer's bill.

Q. Pursuant to this discussion, did you see Dr. Hachenburg? A. Yes; I went there on the afternoon of October 2nd.

Q. And as you previously testified, it was on that occasion that he gave you this document, which has been offered in evidence as Plaintiff's Exhibit 9, entitled Fundamen-

599 tal Considerations; is that not true? A. Yes; he dictated that at the end of our discussion in the afternoon.

Q. How long did you have a discussion with him? Do you have any recollection at all? A. It was a quite lengthy discussion because we went into all the different angles, and we discussed, as you say, the impositions my father wanted made in the contract, and he was mostly concerned getting me on an even basis with my sister, and he said: If I make you this gift, you will have an income of three or four hundred thousand dollars a year, which is much more

than your sister, and if you get fifty or sixty thousand for this, that was about the salary I had in the factory, and the rest I should, he said, account for with my sister.

Q. By account, what do you mean by that, Mr. von Opel? A. It should be added to the capital, and in case of my parents death, it should be considered as given to me, not only the capital but also the 80 per cent; not used by me.

Q. That is the example that Dr. Kronstein gave His Honor here in court? A. Yes.

Q. As a result of this conversation with Dr. Hachenburg, you returned, if I understand you correctly, from Mannheim to your father's home with this Exhibit 9 in your possession? A. Yes, I did.

600 And as you previously testified, you then discussed this outline and the suggestion of Dr. Hachenburg? A. Yes, and he told me immediately that the outline was too long, and he said he didn't like this complicated lawyer's language, and it should be simplified.

Q. Did your father make any statement at that time with respect to any of the provisions referred to in this outline which Dr. Hachenburg had given you? A. Yes. I think there was mention made of a holding corporation, and he didn't like this word holding corporation for some reason of his, and he wanted that stricken out.

Q. Do you recollect any reason he stated at the time? A. I think holding corporations under German viewpoint of tax declaration were was unpopular in Germany as at the time in the beginning of the New Deal.

Q. After having had discussion with your father, can you state what action was thereafter taken? A. This letter of October 3rd arrived.

Q. You mean by that, Plaintiff's Exhibit 7, which has heretofore been introduced? A. Yes, and the only paragraph my father was interested in, that Dr. Hachenburg stated it was a legal transaction.

Q. What was then done, and we are talking about October 5, 1931, Mr. von Opel. What action was taken by you

601 or your father or mother or all of you? A. My father gave the two documents, the letter of Hachenburg, and this what you call, fundamental considerations, to Dr. Wronker-Flatow, and he told him to cut out the whole provision and shorten it somewhat and put it in a little bit more easily understandable language, and he said it should not have more than a page or a page and a half, and he should not spend too much time on it, the details are not so important.

Mr. Gallagher: Let me have Plaintiff's Exhibit No. 5.

By Mr. Gallagher:

Q. Did Dr. Wronker-Flatow prepare a gift agreement thereafter? A. Yes; the same day.

Q. The same day? A. Yes.

Q. When during that day? Do you recollect?

Mr. Burling: Will you fix what date this is?

Mr. Gallagher: This is October 5, 1931.

By Mr. Gallagher:

Q. Was it in the morning or in the afternoon? What is your recollection on that? A. There was one mistake made this morning. I think this mail, the letter of Dr. Hachenburg, wasn't addressed to Wiesbaden, but to the office in Ruesselsheim and received there in the morning.

602 Q. In the morning of October 5th? A. Yes.

Q. Will you state when Dr. Wronker-Flatow prepared this gift agreement, which is in evidence as Plaintiff's Exhibit 5? A. That was prepared on October 5th.

Q. Will you state whether or not that document was signed on that day? A. That is, of course, an English translation. It is not the original.

Q. Yes; we have substituted that. A. My father signed

it first, and I signed it second in his office in Ruesselsheim at the factory.

Q. And you note thereon that your mother's signature appeared there? A. Yes.

Q. I, the wife, Marta von Opel, agree to the above agreement, and signed by her? A. Yes; she signed it in the afternoon, after our return home to Wiesbaden.

Mr. Gallagher: Let me have Plaintiff's 4.

By Mr. Gallagher:

Q. After the signing of this agreement on October 5, 1931, did you have any further discussions with your father
603 or mother or Dr. Wronker-Flatow? A. Before we went home; certainly, yes.

Q. And, now,— A. (Interposing) I spoke to my father too about the necessary secrecy. I was afraid at the time that the Government would put in some retroactive legislation making this gift impossible retroactively, and I asked of him not to speak to anyone about it, so that it would not become known.

Q. When you speak of retroactive legislation, just what do you mean by that, Mr. von Opel? A. Legislation which here you call, I think, ex post facto. That means it doesn't work from the day the legislation is published, but retroactively, covering a period back.

Q. Do I understand you correctly, that you mean you feared if this gift became known, that the foreign currency authorities would issue some regulation as soon as they knew it and make it effective to a date in the past? A. Yes. I thought, of course, they would not do that for many years, but I thought for a short period back they may do that, and that is the reason I asked my father especially not to report the gift tax, but to wait until the last day possible.

Under the German laws there is a three months period within which the gift tax has to be paid, and I asked that

my father wait until the last day with payment for the reports.

604 Q. Did you ever later hear or at that time were you aware of any legislation which was retroactively adopted and enforced in Germany? A. I think the most spectacular case was the case of Van der Lubbe, a Dutchman, who alleged fired the Reichstag, and I know some outstanding Americans went to Germany to protest against the procedure.

Q. Getting back to the signing of the gift agreement, Plaintiff's 5, in the afternoon or early evening of October 5, 1931, what was the nature of your discussions, if any, thereafter, and I will now show you Plaintiff's Exhibit 4.

I also hand you 4-A in evidence, which appears to be a certification by the United States counsel with respect to Plaintiff's 4, which is the power of attorney to cover this.

Now, will you continue, Mr. von Opel, and state what the discussions were after the signing of the gift agreement? A. Yes. The discussion concerns the escrow agreement itself, I explained to my father that it was ridiculous not to immediately contact General Motors and put the gold clause into this contract, and there was no safety clause in the contract. It read it was based on reichsmarks, and at this time it was apparent that the reichsmark might be inflated, and that is the reason that I suggested to immediately contact Smith, and upon second consideration, I thought it might be better that instead of me wiring

605 Smith, because I know he was coming to Europe anyhow, I thought it would nail him down at that time if we would say that myself or my father was coming, and that was the reason that my father's name appears in the—

Q. (Interposing) Just a minute, please.

Now, the cablegram you just spoke about was to John Thomas Smith of General Motors, signed by your father, and sent on the 5th of October, 1931; is that correct? A. Yes, sir.

Q. And I will show you now Plaintiff's 52 for identification and ask you if that is the document? A. Yes; that is it.

Q. Did you receive an answer to that? A. Yes.

Q. I now show you Plaintiff's Exhibit No. 53, purporting to be a cablegram, dated October 5, '31, and addressed to Wilhelm von Opel by John Thomas Smith, and ask you if that is the answer received. A. Yes.

Mr. Gallagher: I offer them in evidence.

Mr. Burling: Are these documents that have been obtained from the defendant and by arrangement with them?

Mr. Gallagher: Yes.

Mr. Burling: I have no objection.

606 (The documents referred to were marked and received in evidence as Plaintiff's Exhibit Nos. 52 and 53.)

By Mr. Gallagher:

Q. Will you tell me the nature of the wire or cable, Plaintiff's Exhibit 52? Is that a night letter or a straight wire? What would you term that? A. That is apparently a straight wire.

Q. Was there any particular reason for sending a straight wire? A. Oh, yes, because I knew from the former exchange of cables that Mr. Smith was about to sail for Europe on October 15th, in the middle of October, and I tried to intercept him in New York before he sailed.

Q. After you received the answer from Mr. Smith—what date was that that you received that? Do you recollect? Was that the 5th or 6th? A. It was, I think, it came in October 6th.

Q. October 6th? A. Yes.

Q. And after you received the cablegram from Mr. Smith, what did you next do? A. We already the day before, on

October 5th, Dr. Wronker-Flatow had suggested a power of attorney, which I should take along should I go to
607 America, and this power was signed in Frankfort in the American General Counsel's office by my father on October 6th.

Q. And Plaintiff's Exhibit No. 4 and 4-A, which have been heretofore offered, are the documents you refer to? A. They seem to be copies.

Mr. Gallagher: Your Honor, we have a whole series of some ten or twelve exhibits, if you will give us an opportunity for a minute or two, and we will have the clerk mark them, and we want them to interrogate the witness.

The Court: All right.

By Mr. Gallagher:

Q. Now, did you have any discussions with respect to reasons for procuring a power of attorney, which is Plaintiff's Exhibit 4? A. Oh, yes; definitely.

Dr. Wronker-Flatow, before he became counsel of General Motors, was counsel of duPont, of Kodak, and other American corporations in Germany, and he had quite a lot of international experience, and he told me, he said, I should not depend too much upon a German gift contract in America, but should take a power of attorney along to accomplish my purpose a little speedier, and in my opinion speed and secrecy is the two principles we had to attend to.

Mr. Gallagher: Now, these documents which are going to be submitted, and which will be identified and then
608 offered, have already been answered by the notice to admit of both parties.

By Mr. Gallagher:

Q. Now, those were the reasons you stated why the power of attorney was procured? A. He also advised us to have

sent our signature card there, too, to the National City Bank so our signatures would be available at the National City Bank.

Q. And was that done? A. Yes; it was also done.

Q. Did you leave thereafter for America? A. Yes; immediately after.

Q. On what date? A. I don't remember whether I boarded the boat in Bremen or in Cherbourg. One can gain about one and a half days in boarding it in Cherbourg because the steamer goes from Bremen to Southampton, and from Southampton to Cherbourg, and from Frankfort, where we were living, is about an even distance.

Q. Did you take any documents with you when you left for America? A. I took the gift deed, yes. I took the power of attorney, and the signature card was sent by mail.

Q. While you were on the boat on your way to America, did you have occasion to send any cablegram to
609 America? A. Yes. From the steamer I sent a cablegram to the trustee of the escrow agreement, to the National City Bank.

Q. I now show you Plaintiff's Exhibit 54 for identification, a cablegram to the National City Bank in New York, dated October 13, 193., signed Fritz von Opel, and ask you if that is the cablegram which you sent? A. It is a radiogram sent from the steamer, not a cablegram.

Q. That was sent by you? A. Yes.

Mr. Gallagher: I now offer this Plaintiff's 54 in evidence.

Mr. Burling: There is a mix-up, Your Honor. There are two Plaintiff's 54.

Mr. Baum: There are books which were 54 to 57.

Mr. Gallagher: I am sorry. Change this to Plaintiff's 58.

By Mr. Gallagher:

Q. You have been speaking about what is now identified

as Plaintiff's Exhibit 58; is that correct, Mr. von Opel? A. Yes, sir.

Mr. Gallagher: I now offer 58 in evidence, a cable to the National City Bank.

You will have to change all those numbers, Mr. Clerk.

The Deputy Clerk: Why can't you call them "A"?

Mr. Gallagher: We want to keep the same order of numbers as long as possible.

The Court: Take your time and correct them.

Mr. Ingoldsby: Inasmuch as a couple of numbers were omitted, it necessitates changing the numbers of all these.

What is the last exhibit you now have?

The Deputy Clerk: 82.

Mr. Ingoldsby: Oh, no, no.

Mr. Gallagher: 58 is the last.

Mr. Ingoldsby: Should not the next number be 59? In other words, as I understand it, the books and records, which were the last documents identified, were Plaintiff's exhibits before the papers which have been shown to Mr. von Opel.

The last number was what—57?

The one just handed to the clerk should be 58, and this should be 59 and run chronologically from there on.

Mr. Gallagher: That is correct.

Mr. Ingoldsby: Would you mind changing the number on this, for example, 55 should be 59, and so on through the list. Do you understand that?

The Deputy Clerk: I took it from your last exhibit number, which was 50, and I handed you back 50, 51, 52, 53, and so on in rotation.

Mr. Gallagher: You have to renumber these be-
611 cause we have already got Plaintiff's 54, 55, 56, and 57. We are keeping the same numbers as in the deposition.

The Court: Suppose you take five minutes to straighten it out. I will take a recess.

(Thereupon a short recess was had, during which Mr. Gallagher asked that the following statement be shown in the record):

Mr. Gallagher: The cablegram referred to of October 13, 1931, to the National City Bank, from von Opel, identified as 57 and 58, has been offered in evidence as Plaintiff's 54, on correction by the clerk.

(At the conclusion of the recess, the following occurred):

612 Mr. Gallagher: Your Honor, I wish to take the burden off of the clerk, where the mistake came from our error in originally having the books and records identified.

The Court: All right.

The Deputy Clerk: Thank you, Mr. Gallagher.

Mr. Barling: Your Honor, Mr. Gallagher is very courteous in taking the burden off of the clerk. May I ask him also to take the burden off of us? We are now confused as to what exhibit is what. But rather than take up the time now to straighten it out, may I suggest, Your Honor, that the plaintiff furnish us with a table of exhibits, the way they are now numbered?

Mr. Gallagher: We will be glad to do so.

I might say, Your Honor, that last document is now in evidence as Plaintiff's Exhibit 54.

(The document referred to was marked and received in evidence as Plaintiff's Exhibit No. 54.)

By Mr. Gallagher:

Q. That cablegram, Plaintiff's Exhibit 54, Mr. von Opel, requests that you have a conference on a confidential matter: that you are arriving on the following afternoon, the 14th of October.

When you arrived in New York, what did you do? A. I went immediately to the National City Bank to find out the name of the officer who was in charge of this
613 escrow agreement.

Q. Did you find out who he was? A. Yes, I tried to find out, and found it out.

Q. What was his name? A. His name was vice president Pratt, of the National City Bank.

Q. And did you have a conversation with him? A. Yes.

Q. And what was the nature of that conversation? A. I asked him whether it would be possible for the trustee to accept me as a new party to the contract.

Q. Did you discuss with him the power of attorney, you state, which has previously been offered in evidence? A. No; I asked him first whether he would accept me as a new party. I told him about the deed of gift, and he asked me if it was an instrument made in America. And I said no, it was a German deed of gift. And he told me it would be rather complicated, that not only his lawyers but some German expert would have to go into the matter to find out the extent of this gift agreement.

I asked him how long that would take, and he said a number of days or weeks. So I immediately said, "I have taken a power of attorney along." I said I had expected it, and was so advised by counsel. And I showed him the power of attorney.

614 Q. Did he state to you what action you should take, or what action did you take after the conversation? A. After this conversation, either the same day or one of the next days, I filed this power of attorney with the National City Bank. But the next day I went to General Motors and used this power there.

Q. Whom did you see at General Motors? A. I saw General Counsel John Thomas Smith.

Q. And you had a discussion with him, did you? A. Yes.

Q. What was the nature of that discussion? A. The first discussion was whether General Motors would be willing to put a gold clause into this agreement, meaning to estab-

lish a relation between the reichsmark and the dollar, or gold.

Q. And did Mr. Smith give you any information at that time? A. Not immediately. He thought it over, I think, a day or so, and then the corporation refused. And I terminated the conference.

Q. I now show you Plaintiff's Exhibit 6 in evidence, a letter dated October 17, 1931, addressed to General Motors and signed Wilhelm von Opel, per Fritz von Opel, attorney in fact, and ask if that is the termination letter. A. Yes, sir. It is a copy.

615 Q. Well, it is the same thing in here, Mr. von Opel. I note that in that termination letter, Mr. von Opel, it calls for six separate payments. Was there any reason for that? A. Oh, yes. I saw that the reichsmark exchange rate in New York might be rather unstable, and I didn't want to get the rate of exchange based upon any law day. So I asked the corporation to base it upon the average of six days.

Mr. Gallagher: I now offer in evidence Plaintiff's Exhibit 55, Your Honor, a letter of October 17, 1931, addressed to the National City Bank by John Thomas Smith, with respect to this matter.

(The document referred to was marked and received in evidence as Plaintiff's Exhibit No. 55.)

By Mr. Gallagher:

Q. I show you Plaintiff's Exhibit 56 for identification, Mr. von Opel, a letter dated October 19, 1931, to the National City Bank, and signed Fritz von Opel. A. Yes.

Q. Will you state whether or not that letter was signed by you? A. Yes, sir.

Q. And did you address that to the bank? A. Yes, sir, I did.

616 Q. Is that with reference to this same matter? A. Yes, sir.

Mr. Gallagher: I now offer this letter in evidence, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 56.)

By Mr. Gallagher:

Q. In your conversations with Mr. Smith, did he aid you at all with respect to any introduction to the bank officials? A. Yes, I think a few days later he gave me a kind of introductory letter to the bank.

Q. I show you a letter of October 19, 1931, addressed to Mr. E. F. Regan, assistant vice president, National City Bank, and ask you if this is the letter you refer to. A. Yes.

Q. It is identified as Plaintiff's Exhibit 57. A. Yes; it was given to me two days after I terminated the contract.

Mr. Gallagher: I now offer Plaintiff's Exhibit 57.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 57.)

By Mr. Gallagher:

Q. I now show you a letter, Plaintiff's Exhibit 58, Mr. von Opel, a letter of October 20, 1931, addressed to
617 General Motors, by Wilhelm von Opel, by Fritz von Opel, attorney in fact, and ask you if you sent that letter to General Motors. A. Yes, I did.

Mr. Gallagher: I now offer Plaintiff's Exhibit 58, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 58.)

Mr. Gallagher: I now offer Plaintiff's Exhibit 59, Your Honor, a letter of October 20, 1931, addressed to the General Motors Corporation, attention Mr. John Thomas Smith, signed by G. J. Kenny, assistant trust officer of the National City Bank.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 59.)

By Mr. Gallagher:

Q. I will now show you, Mr. von Opel, Plaintiff's Exhibit 60 for identification, a letter of October 20, 1931, sent to General Motors by Fritz von Opel. Did you send that letter? A. Yes, sir. I did.

Mr. Gallagher: I will offer Plaintiff's Exhibit 60, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 60.)

618 By Mr. Gallagher:

Q. And I now show you Plaintiff's Exhibit 61, Mr. von Opel, a letter of October 20, 1931, addressed to General Motors, signed by Wilhelm von Opel, by Fritz von Opel, attorney in fact, and I will ask you if you addressed that letter to General Motors. A. Yes; it all concerns the matter of the last three letters, the purchase of General Motors stock.

Mr. Gallagher: I now offer Plaintiff's Exhibit 61, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 61.)

Mr. Gallagher: I also offer Plaintiff's Exhibit 62, a letter to Wilhelm von Opel, in care of John Thomas Smith, dated October 20, 1931, from J. P. Morgan & Company.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 62.)

By Mr. Gallagher:

Q. I show you a letter, Plaintiff's Exhibit 63, Mr. von Opel, dated October 20, 1931, addressed to General Motors, signed Wilhelm von Opel, by Fritz von Opel, attorney in fact. Did you send that letter to General Motors? A. Yes. I think it must be identical with one of the first letters.

619 Q. It is? I am sorry.

Mr. Gallagher: No. 63, Your Honor—I will offer it.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 63.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 64 for identification, a letter dated October 22, 1931, signed by John Thomas Smith, addressed to Dr. Fritz von Opel, Plaza Hotel, New York. Did you receive that letter? A. Yes, I received it.

Mr. Gallagher: I now offer Plaintiff's Exhibit 64, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 64.)

By Mr. Gallagher:

Q. I now show you a letter of October 23, 1931, addressed to John Thomas Smith, by Fritz von Opel, and ask you if you sent that letter, Plaintiff's Exhibit 65 for identification. A. Yes.

Mr. Gallagher: I now offer Plaintiff's Exhibit 65, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 65.)

620 By Mr. Gallagher:

Q. Now, during this period of time, Mr. von Opel, from October 17, 1931, until October 23, 1931, you were acting, as I understand it, under the power of attorney which had been given to you by your father and which is in evidence as Plaintiff's Exhibit 4, is that correct? A. Yes, sir.

Q. I will now show you Plaintiff's Exhibit 47, which is in evidence, a letter addressed to Fritz von Opel, dated September 22, 1933, signed by Assistant Vice President, admitted by the parties to this action to have been sent and received, and quoting therein a cable received from the Deutsche Bank & Disconto Gesellschaft in Frankfurt, on October 24, 1931, and ask you whether or not that power of attorney was received and whether or not you acted pursuant to it. A. Yes, sir.

Mr. Gallagher: Plaintiff's Exhibit 47, which is in evidence, I believe, and I will offer it if it is not.

(Document previously marked for identification Plaintiff's Exhibit No. 47 was received in evidence.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 66 for identification, a letter dated October 28, 1931, addressed to the National City Bank, attention Mr. Regan, signed Wilhelm von Opel by Fritz von Opel, attorney in fact, and ask
621 you whether or not you sent this letter. A. Yes. It was sent, and it is a new power of attorney.

Q. I see. What was the substance of that letter? What was the purpose of it, Mr. von Opel? A. Under the escrow agreement, General Motors had to make payment within four weeks; and to simplify matters they wanted to pay to my father's account there. And I, as his attorney, instructed them to do it.

Q. And what does this letter do thereafter? A. May I see it again?

Q. Does that letter constitute a transfer from your father's account to your account? A. Oh, yes. This is the second operation.

Mr. Gallagher: I now offer Plaintiff's Exhibit 66, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 66.)

By Mr. Gallagher:

Q. Now, Mr. von Opel, did you at this time give any instructions to the bank with respect to payments of income and dividends and interest and so forth?

Mr. Burling: Will you specify the bank you are referring to, please?
622 Mr. Gallagher: The National City Bank, or the City Bank.

Mr. Burling: Will counsel please specify which bank he is referring to?

Mr. Gallagher: It is my information that by virtue of a merger, it is one bank, operating under one or two names.

Mr. Burling: I think they are owned together, but operated separately, Your Honor.

The Court: I guess perhaps the witness will have to tell us.

By Mr. Gallagher:

Q. This last exhibit, Plaintiff's Exhibit 66, is addressed to the National City Bank, is it not, Mr. von Opel? A. Yes.

Q. And it asks them to transfer any securities or cash they are now holding, or may hold in the future, for your account to the City Bank Farmers Trust Company? A. Yes.

Q. For the account of Fritz von Opel? A. Yes.

Q. Is that correct? A. Yes.

Q. So that we are now talking about moneys in the City Bank Farmers Trust Company, which, however, I understand is the same thing as the National City Bank.

623 A. It is shown here on the exhibit by the A and B.

Q. All right. Now, did you give the City Bank any instructions with respect to your father's account? And I show you plaintiff's exhibit 69 for identification. A. Yes. I instructed them specifically. It was only a transfer account. The money was in there only for a day, going in and going out immediately. And I specifically instructed them not to report anything to my father.

Q. Would that be the City Bank you gave those instructions to, or the National City Bank? A. That was the National City Bank, because my father's account was only at the National City Bank.

Mr. Gallagher: I now offer Plaintiff's Exhibit 69, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 69.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 70 for identification, which purports to be a custodian account for Fritz von Opel, Main A/C, City Bank Farmers Trust Company, and ask you with respect to the second page there, or the first page inside the folder, whether or not that is your signature on that document. A. Yes, it is.

624 Q. I note there a line which states "My legal residence is Belgium." A. Yes.

Q. Did you state that? A. Yes, sir, I did.

Q. Turning to the next page, page 2 inside this folder, I note therein a Custodian account audit sheet. Did you sign this sheet? A. No, I didn't.

Q. Does this sheet contain thereon certain instructions, apparently contained thereon certain instructions? A. Yes; I think I gave those instructions.

Q. And you gave those instructions? A. Yes, I think so.

Q. I note therein it states again "Legal residence," and your residence is stated "Belgium." Is that correct? A. Yes, that is correct.

Q. Now, would you state what the substance was of the instructions that you gave to the bank? A. I instructed them to transfer 20 per cent of the balance in the main income account to a custodian account Fritz von Opel, and 80 per cent to the principal von Opel main account. And I further asked them to send the statements to me and one to my father.

625 Q. What would the statement with respect to your father be? Does it state thereon? A. A statement in respect to the income.

Q. With respect to the income? A. Yes.

Q. I note thereon a forwarding address or an address "Rupenhorn 11, Berlin-Spandau, Germany." Could you

state what that address is? A. That was a forwarding address I left with the banks. They wanted to reach me by wire, and I told them that would be the first place they could reach me.

Q. I see.

Mr. Gallagher: I now offer Plaintiff's Exhibit 70, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 70.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 71, Mr. von Opel, which is stipulated between the parties to be a memorandum from the files of the City Bank, dated November 17, 1931, addressed to Miss Cantrell, of the Remittance Department, and signed by B. D. Shapiro, Custodian Administration, and ask you if you gave to the Custodian Administration or to some other officer of the bank the instructions which appear therein. A. I don't re-

626 member this.

Q. You don't remember it? A. No.

Q. Reading it, did you recollect that that would be the substance of a conversation you might have had or any instructions you might have gvien? A. It might be

Mr. Burling: We will admit that that was kept in the regular course of business; we will not object to your offering it.

Mr. Gallagher: We now offer it as Plaintiff's Exhibit 71, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 71.)

By Mr. Gallagher:

Q. And I now show you Plaintiff's Exhibit 68, Mr. von Opel, for identification, and ask if that, which appears to be a transcript of account of Geheimrat Wilhelm von Opel, and ask if that apparently reflects the transactions in General Motors stock. A. Yes, it does.

Mr. Gallagher: I now offer Plaintiff's Exhibit 68.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 68.)

627 By Mr. Gallagher:

Q. Mr. von Opel, would you not step down from the stand for a moment, and take a look at this chart, which has been identified in smaller facsimile fashion as Plaintiff's Exhibit 80, a copy of which I would like to give to His Honor, and offer.

Mr. Burling: Do I understand this is offered in evidence?

Mr. Gallagher: Yes.

Mr. Burling: I object, on the ground that it contains several errors. It does not accord with the documents—

The Court: I cannot receive it in evidence, over the objection.

Mr. Gallagher: We will withdraw the offer at this time, Your Honor.

By Mr. Gallagher:

Q. Now, Mr. von Opel, in the light of the testimony which you have heretofore given, and the documents which have been introduced in evidence, will you stand at this side of this chart and point out to the Court what has happened to the Opel shares up until this time, giving dates as they appear?

Mr. Burling: Do you mean up until 1948?

Mr. Gallagher: No—up until the time we are now at in his testimony, the latter part of October, when he has transferred from his father's account to his own account the funds and securities.

628 The Witness (indicating): We are now here to this account, at the point called B.

By Mr. Gallagher:

Q. And does this chart reflect accurately where the shares have flown, that originally was to go into this account? A. Some shares in here, and some payment over to the National City Bank (indicating).

Q. And in the account originally by virtue of Plaintiff's Exhibit 4 in evidence, the funds passed through this account? Is that correct? A. Yes; that is a transfer account.

Q. And now by virtue of the notification which you gave to the bank on October 28, 1931, the funds and securities are all in or coming in to this account marked B? Is that correct? A. Yes, sir.

Q. That is all. (The witness returned to the stand.) Now, Mr. von Opel, did your father ever, at any time then or from that time until his death, ever call on you—

Mr. Burling: I am very sorry to interrupt you. I do have to ask you a question about B.

Mr. Gallagher: All right.

Mr. Burling: I object to the question on the ground that the document which has just been marked—and perhaps I could save time later by stating what
629 my objection is. I contend that the document marked "Fritz von Opel, Custodian."

The Court: I don't believe the matter is in dispute.

Mr. Gallagher: You mean the word "custodian" should be on there (indicating chart)?

Mr. Burling: Yes.

Mr. Gallagher: It is on the exhibits introduced. I will write it in there (writing on the chart). Is that satisfactory?

Mr. Burling: Thank you.

By Mr. Gallagher:

Q. Did your father call on you for any payment of income or payment of dividends, Mr. von Opel? A. No, never.

Q. At that time or at any time until the time of his death? A. No; never.

Q. Did you ever pay any income or dividends to your father? A. No, I did not.

Q. Or your mother? A. No.

Q. Did your mother ever ask you for any payment of income or dividends? A. No, she did not.

Q. Did you ever receive any instructions from your father on how to invest your money? A. No.

Q. Did you ever receive any instructions from your mother on how to invest your money? A. No.

Q. Did you ever consult with your father prior to making investments with this money? A. No.

Q. Did you ever receive any instructions from him as to how or where you were to invest this money? A. No.

Q. Now, Mr. von Opel, we are down to B on this exhibit, Plaintiff's Exhibit 80, I believe it is. Is that correct? A. Yes.

Q. To go ahead for just a moment, so that we can get ourselves further down on this chart, I will now show you Plaintiff's Exhibit 72, a letter of May 9, 1932, addressed to the City Bank Farmers Trust Company, by the Overseas Finance Corporation, identified as Plaintiff's Exhibit 73, requesting the bank to open an account in their name, and attaching a power of attorney for Fritz von Opel.

And I show you also Plaintiff's Exhibit 74—

Mr. Burling: Would you be kind enough to ask the witness to identify the signatures on that document?

They are somewhat illegible.

631 Mr. Gallagher: I surely will.

By Mr. Gallagher:

Q. Have you any idea whose they are, or can you identify any of the signatures on that document? A. One is Dr. Frankenberg's signature, and the other one seems to be Dr. Meyer's signature.

Q. Dr. Meyer's, you think? A. Yes. It is rather unreadable.

Q. I show you Plaintiff's Exhibit 74, which purports to be a power of attorney to the bank for Fritz von Opel, dated May 9, 1932. A. Pardon me, I think it is Dr. Henggeler's signature.

Q. Dr. Henggeler's signature, rather than Dr. Meyer's? A. Yes.

Q. I also show you Plaintiff's Exhibit 72, a letter of May 31, 1932, addressed to the City Bank Farmers Trust Company by you, directing that they transfer to a custodian account in the name of Uebersee Finanz Korporation all the cash and securities now held by you in your main principal and income account, with the exception of 47,000 shares of General Motors stock which is to remain in your account subject to further instructions. And I ask you to read that and I ask you if you sent that letter. A. Yes, I did.

632 Q. And I also show you a letter identified as Plaintiff's Exhibit 75, dated May 31, 1932, addressed to the City Bank Farmers Trust Company, and signed by you as attorney for Uebersee Finanz-Korporation, and ask if you sent that letter. A. Yes, I did.

Mr. Gallagher: I now offer these documents, Plaintiff's Exhibits 72, 73, 74, and 75, in evidence, Your Honor.

(Documents referred to were marked and received in evidence as Plaintiff's Exhibit Nos. 72, 73, 74, and 75.)

By Mr. Gallagher:

Q. Now, would you step down for just a moment, Mr. von Opel, and point out where, on this chart, Plaintiff's Exhibit 81 for identification, the funds now are? A. They are in this account C.

Q. Thank you.

Mr. Burling: I object to that, Your Honor, on the ground that the documents just offered in evidence on their face disclose that the account was for Uebersee Finanz Korporation, but omits to indicate that the account was for Uebersee as trustee for Fritz von Opel.

Mr. Gallagher: All right; we will strike that for a moment.

Mr. Burling: The chart does not reflect plaintiff's
633 own argument.

The Court: What was the question?

Mr. Gallagher: There is an objection, Your Honor. I had asked Mr. von Opel to identify where the money now was. He stated it had come from this account down to this account (indicating on chart), with the exception of forty-seven odd thousand shares of General Motors.

Mr. Burling objected, on the ground that the evidence we have introduced does not register the corporation as trustee for Fritz von Opel. We will strike that for the moment.

Mr. Burling: Then I will withdraw the objection.

And may the record indicate counsel has stricken the words "as trustee for Fritz von Opel" from Box C?

Mr. Gallagher: Temporarily.

The Court: Mr. Gallagher, you had better let me read these.

Mr. Gallagher: All right, Your Honor.

The Court: You are a little bit ahead of me. All right.

By Mr. Gallagher:

Q. At that point, then, we have all the cash going into this account? Is that right, Mr. von Opel? A. Yes.

Q. What happened to the forty-seven odd thou-
634 sand shares of General Motors? A. They remained for the time being outside, in several corporations; but they in turn went into the Overseas Finance Corporation account. This chart certainly doesn't show every single account's action.

Q. Yes, I know that—but as a general outline. A. Only as a general outline.

Q. I note you have here you acquired the stock of Overseas in 1931. Is that correct? A. Yes, I did.

Q. And I note here it says the securities were sold, under the arrow, "to corporation 1934 and '35." By that do I understand correctly that all the securities sold and all cash had come into Uebersee as of 1934-35? A. Finally. Some of them even took a detour, to the Frima Corporation; but finally they ended in Overseas.

Q. Will you explain what the Frima Corporation is? A. The Frima Corporation is a corporation under a Liechtensteinean corporation.

Mr. Gallagher: I now offer, Your Honor, Plaintiff's Exhibit 76, a stipulation between the parties with respect to what the Frima is. And I think the stipulation itself gives sufficient information as to the documents.

Mr. Burling: I think the record should point out that the stipulation is that a witness, if called from
635 Switzerland, would have testified as follows.

Mr. Gallagher: It states it in the stipulation.

Mr. Burling: Yes; I just wanted the record to make that clear.

The Court: All right.

(The stipulation referred to was marked and received in evidence as Plaintiff's Exhibit No. 76.)

By Mr. Gallagher:

Q. Now, directing your attention to the latter part of October, 1931—

After these instructions, which are expressed in the documents which have heretofore been introduced had been given by you, did you stay in America? A. No. I returned to Europe.

Q. What did you do? You went to Europe? A. I first saw my father for a day or two.

Q. Yes? A. And then went to see an architect in Berlin.

Q. Yes? A. And then went to Switzerland.

Q. I see. Did you go back to Antwerp? A. Yes. I spent quite a time in Antwerp, to finish up my affairs there.

Q. And did you maintain that home or residence
636 that you had in Antwerp? A. Until the end of the year, until we moved to Switzerland.

Q. And then you moved to Switzerland? A. Yes.

Q. Now, during this period of time, that you were in Switzerland, you might recollect that you had stated that in the fall, or September 9, as I recollect, to be exact, your father had applied for a license to the Foreign Exchange Control authorities, with respect to the three and a half million Swiss francs. Was any further action taken after your return to Europe with respect to this sum of money? A. Oh, yes.

Q. Will you explain to the Court, please, what happened? A. That was a very ticklish affair, because in the application we had filed, my father had stated that he wanted to put me up in business by this loan, and I thought we shouldn't give it up all of a sudden. Otherwise the authorities might ask what else I have gotten in the meantime.

So I told my father we should play along for a while and give it up slowly, and not miss out at least showing a fight.

Q. And as a result, were certain steps taken by you in this regard? A. Yes. I attached the account
637 in Switzerland, and sent after a while and lifted the attachment, and it was then returned to my father's possession.

Q. Were those Swiss francs ultimately returned to German control? A. Yes, ultimately, yes.

Q. Did you continue thereafter to maintain a residence in Switzerland, Mr. von Opel? A. The first year I rented a house there; it was in 1932. And I rented the same house again in 1933, with an option to buy; and I bought the house in, I think, the summer of 1933, and then began to rebuild it.

Q. Did you finish rebuilding it? A. Yes, I finished rebuilding it, I think it was in the beginning of 1934. And at the same time I took permanent residence in Switzerland, and made tax arrangements there, and so on.

Q. During this period of two years, were you making periodic trips to the United States? A. Yes.

Q. Now, I will direct your attention to the month of February, 1933, and ask if you recollect the purchase of a quantity of gold at that time, of about a million dollars value, by the Overseas Finance Corporation? A. Yes, I do.

638 Q. And I will ask you if subsequent to the purchase of that gold, the corporation became involved in litigation? A. Not immediately. We filed, as I remember, an application, and the application was denied us, as far as I remember. I think it was filed. I think first Ladenberg filed an application in behalf of Overseas.

Q. For the release of the gold. A. For the release of the gold. And then later in 1935 an application was filed with the Treasury Department by John W. Davis.

Q. And what was the result of that application? Was it passed on favorably or unfavorably? A. It was denied ultimately. We had delivered gold, and we took quite a terrific loss on it.

Q. You state you took quite a terrific loss. Will you explain to the Court that phase of that transaction, Mr. von Opel? A. As a Swiss corporation, we carry on our books in Swiss francs. And when we bought the gold, it was valued, in our books, with about 6.4 million Swiss francs. And after the dollar was devaluated from, I think, 100 per cent to 59 per cent, it was so much less worth in Swiss francs; and we took a loss of I think close to three million francs—between two and a half and three million francs we had to write off.

639 Q. That would be roughly about four or five hundred thousand American? A. Yes; I should say about $450,000 to $500,000.

Q. I see. Now, if you had gotten the gold out of America and returned it to Switzerland what would that gold there have been worth in Swiss francs? A. Just the same as before.

Q. The same value as the amount that you had brought out originally? Is that correct? A. Yes, certainly.

Q. Now, in the course of that litigation, or rather, I should say first, in the course of the negotiations with the Treasury Department, and after the application had been filed, you signed an affidavit, did you not, Mr. von Opel? A. Yes, I did.

Q. And paragraph 15 of that affidavit reads as follows: "The 97 bearer shares of Uebersee"—

Mr. Burling: Where are you reading, please?

Mr. Gallagher: This is Defendant's Exhibit 8.

Mr. Burling: And will you give me the page number?

Mr. Gallagher: My page reference is 196. That would be page 66 in your exhibits.

Mr. Burling: Thank you.

By Mr. Gallagher:

Q. That paragraph reads as follows, Mr. von Opel:

640 "The 97 bearer shares of Uebersee which I acquired in the manner above stated are now on de-

posit in a vault in my name, No. 1917, with the Swiss Credit Anstalt in Zurich, Switzerland, the key to which is in the possession of Dr. Frankenberg. This key is held by Dr. Frankenberg as agent and representative of my father, Wilhelm von Opel, for the purpose of safeguarding his usufruct. In addition I have an oral agreement with Dr. Frankenberg as managing director of Adler & Co. A. G. by which those shares are to secure any existing or future indebtedness on my part to Adler & Co. A. G. This arrangement was made in connection with a credit opened to me by Adler & Co. A. G. up to 1,500,000 Swiss francs, principally for the purpose of fulfilling a joint obligation to my father and myself to the German Reichsbank."

I will ask you, are those facts stated in that paragraph true? A. Yes, certainly.

Q. Now, Mr. von Opel, will you state to the Court the circumstances giving rise to those facts which are there stated and which I have just read to you? A. Just prior to this date, my father has been fined three and a half million reichsmarks by the German authorities, and I had to take steps to protect my own interest in this
641 matter.

Q. You state your father had been fined three and a half million reichsmarks. Will you state what that fine was for?

Mr. Burling: I object, Your Honor. The objection is that there was in fact a proceeding in a German court—I won't state what it was—relating to the gift which is in litigation here. I have prepared, if Your Honor please, a memorandum of law in which we argue that this Court should not receive the record or the judgment of the German court as having any probative value concerning the facts in issue here.

This is a very serious objection on this point, if Your Honor please. If this topic is opened, we will have to go

back and read perhaps 300 pages of depositions.

Mr. Gallagher: I don't believe we will, I might say.

Mr. Burling: Might I just finish my argument?

Extensive depositions have been taken from Wilhelm von Opel and from various other persons having knowledge of this proceeding in Germany. If this instrument goes before the Court, then both sides would have to explore what happened.

The Court: I have to go back. Read me that part again, and then I will follow you a little bit better after I get that in my mind. Read me that part you are referring to in the affidavit.

642 Mr. Gallagher: In the affidavit it states:

"The 97 bearer shares of Uebersee which I acquired in the manner above stated are now on deposit in a vault in my name, No. 1917, with the Swiss Credit Anstalt in Zurich, Switzerland, the key to which is in the possession of Dr. Frankenberg. This key is held by Dr. Frankenberg as agent and representative of my father, Wilhelm von Opel, for the purpose of safeguarding his usufruct. In addition I have an oral agreement with Dr. Frankenberg as managing director of Adler & Co. A. G. by which those shares are to secure any existing or future indebtedness on my part to Adler & Co. A. G. This arrangement was made in connection with a credit opened to me by Adler & Co. A. G. up to 1,500,000 Swiss francs, principally for the purpose of fulfilling a joint obligation to my father and myself to the German Reichsbank."

Now, the proceeding, Your Honor—

The Court: And let him finish his argument. What is the question on that? You have asked him first if those facts are true, and he said yes.

Mr. Gallagher: Yes; and I asked him to state what the circumstances were which caused him to take the steps related therein.

We are offering the decree, not for the value it
643 may have as an expression of German law on the part of the German foreign currency authorities; but we are offering it as proof of the primary fact as to why he took certain actions subsequent to the entry of this decree.

The Court: And you want to know what information he had as to what happened over there?

Mr. Gallagher: He was fully aware of it. He was right in the proceedings.

The Court: But Mr. Burling's point, as I understand it, is that what actually occurred over there is not material, and it is not provable here.

Is that right?

Mr. Burling: That is exactly my point. But I think I might be able to come to an agreement with my friend which will obviate this argument. I will concede a proceeding was had before the German courts, as a result of which Wilhelm von Opel was fined three and a half million marks, and Fritz von Opel was required to pay $500,000.

I will go that far.

Mr. Gallagher: Will you agree that a decree was entered?

Mr. Burling: That a decree was entered. The decree raises the basis for making an argument as to what the German court did. We refute that argument with hundreds of pages of testimony.

644 The Court: You haven't gotten to that point yet. I think we may be close to what you want. The question you are asking the witness is what led him to make this statement? Is that right?

Mr. Gallagher: And to take the actions referred to therein.

The Court: And to take that action?

Mr. Gallagher: That is right, Your Honor.

The Court: And Mr. Burling says he will concede that the witness may testify he did that, based upon a decree

of a German court which fined his father some three million—what was it?

Mr. Gallagher: Three and a half million reichsmarks.

The Court: And $500,000 of which the witness was required to pay?

Mr. Gallagher: No, Your Honor.

Mr. Burling: No. There was a collateral arrangement with the German Government whereby at the same time Fritz von Opel agreed to pay $500,000.

The Court: Does that get all you want?

Mr. Gallagher: No, Your Honor, it does not. If Your Honor would permit me a moment, here is the situation:

There was an investigation conducted into the whole question of this gift, for two years, by the German foreign currency authorities, a very searching and sweeping
645 investigation of both Wilhelm von Opel and Fritz von Opel.

The result of that investigation was a determination by the authorities, who found that his uncle had engaged in a false transaction, but sustaining the father's position that his gift had been a valid one.

They then fined the father, however, three and a half million reichsmarks, for failing, as they state in the decree, to exercise his contractual right, which Dr. Kronstein spoke about, I know Your Honor will recall, his contractual right to call on the establishment of the Niessbrauch. And that was what the fine was imposed upon his father for.

Now, we are going to show, because of that, and because of the language of the decree itself, what motivated Mr. von Opel in taking the steps that he did during the period of the next 15 months. It is very material and very pertinent to explain his actions.

The Court: I think I would have to sustain his objection to what this witness construed the decree to be—I mean, in so far as its accuracy is concerned. Now, what reaction he had to it, and why he took the steps he did—

Mr. Burling: If Your Honor please, in view of my

friend's statement, may I make a statement as to what our contention is as to the facts? We say they are wholly different.

Our position is that Mr. Gallagher, doubtless in
646 good faith, has wholly misstated what the facts of the German transaction are, and I would like to make a counter statement, if I may.

The Court: It hasn't made any impression on my mind. I don't know if it might not be a waste of time, if I am to put any reliance on the German decree. I will let you gentlemen state all the grounds you want. Now you are stating an objection to a statement by this witness why he took this action. Is that right?

Mr. Burling: I think if Your Honor will listen to me on the facts, I can make our position more clear.

The Court: All right.

Mr. Burling: Our contention is that the German authorities investigated the gift. The prosecutor, first an original investigator, and then prosecutor in the public prosecutor's office at Frankfort, came to the conclusion that the gift was a sham. Therefore the failure of Wilhelm von Opel to report the entire $3,700,000 which was obtained from General Motors was a violation of German law, and he recommended prosecution to his chief; and his chief recommended prosecution to the Minister of Justice in Berlin.

There were conversations between Wilhelm von Opel and the Deputy Minister of Justice in Berlin. At that time it was stated that Adolph Hitler personally had directed there was not to be a prosecution.

647 Mr. Gallagher: Clearly heasay.

Mr. Burling: And an arrangement was to be made, and so it was agreed, with the Minister of Justice in Berlin, that Wilhelm von Opel would plead what is the equivalent of nolo contendere, to a Judge, of not having reported the income under the usufruct, in return for a fine of three and a half million marks, and a collateral agreement running from Fritz to put up $500,000.

So the court, the decree of which my friends wish to put before Your Honor, heard no testimony whatsoever. What happened was that the prosecution came in with a prearranged charge, and Wilhelm von Opel did not contest it.

I say that where there is—and I am sure it does not happen in this Court, Your Honor—but there are criminal courts and there are prosecuting officers where persons are permitted to plead guilty to lesser offenses as a part of a deal.

The Court: Mr. Gallagher, this is not part of your case in chief, is it?

Mr. Gallagher: I think it is, Your Honor.

The Court: What are you trying to establish?

Mr. Gallagher: I would establish the validity of the affidavit and show what steps he thereafter took in 1935 and 1936.

648 The Court: But aren't you anticipating some events?

Mr. Gallagher: No, Your Honor. We are trying to show what he did with the Uebersee shares thereafter, they now being in the Frima, and the steps he took in connection with this, the steps he took in connection with the put and call with the Swiss.

The Court: You can prove what steps he took, without telling all the reasons why, can't you? And if the reasons are impugned, you might come back later on. That is why I say I don't think the reasons are part of your case in chief.

Mr. Burling: I am perfectly willing to concede that there was a prosecution, and that a three and a half million mark fine was imposed. I merely want to keep out any argument about what the German court did or did not do.

The Court: In the ordinary course of events, the thing to do is to prove the transaction. And then if your adversary proves it was not a bona fide transaction, and

attacks the reason, you show the reason. You haven't reached that yet.

Mr. Gallagher: We feel in stating the steps this man took, and the actions, to understand them at this time, it is necessary to know what motivated him in his course of conduct.

The Court: I think ordinarily where you take an action, you prove the action; and until it is impugned, it
649 stands.

I am perfectly clear I cannot let this witness give any testimony that I could rely upon as to his interpretation of the decree of the court. That is evidently what Mr. Burling is afraid of. And if he says he interpreted it in such and such a way, and he took these steps for such a reason, that certainly does not bind me. I don't know whether it makes a whole lot of difference what he says on that point.

Mr. Burling: I have failed to make myself clear to Your Honor in one respect. I am not arguing so much what this witness says he thinks the German court did: is inadmissible. I am saying that what the German court did in fact do is inadmissible, since it has no bearing on this case.

The Court: That may be true.

Mr. Burling: If there is some question about motive, I submit a prosecution was had, and his father was fined three and a half million marks. I will concede that. But I am trying to avoid an argument by Mr. Gallagher which I foresee will come in if the decree comes in, that the German authorities made a determination.

I say, as to what the German authorities did, first, I don't know; and, secondly, if we did know, it would be immaterial to this Court.

I have collected the authorities in general, and they are overwhelming, Your Honor.

The Court: I have no doubt about that. The
650 only question I understand he is interested in is trying to explain the fact that he had a trans-

action and had a reason for it. And what the reason is—

Mr. Gallagher: I am not offering it for the probative value of the decree at all, Your Honor.

The Court: Won't his stipulation give you enough?

Mr. Gallagher: Will you state it again, Mr. Burling?

Mr. Burling: I offer to stipulate that a proceeding was had in which Wilhelm von Opel was fined three and a half million reichsmarks, and that a collateral agreement was made at the time of this fine, between Fritz von Opel and the German authorities, whereby Fritz von Opel agreed to pay to the German Govetmment $500,000.

By Mr. Gallagher:

Q. Do you deny that collateral agreement? A. That is not correct. That is entirely incorrect. I did not pay anything.

Mr. Burling: I said there was an agreement that that be done.

Mr. Gallagher: Your Honor, could we recess at this point, and we will endeavor to reach a stipulation on that point?

The Court: If you can get a stipulation as to that, it is all right. If not, I will have to sustain the objection.

651 You say the action was taken because of the decree of this court in Germany. That is all you need, in direct.

Mr. Gallagher: Thank you.

(The witness left the stand for the time being.)

The Court: Gentlemen, I am prepared to rule on this proposition about the witness. I have written it out so that you can have copies of it, and my ruling is as follows:

"There has been admitted in evidence, according to Rules of Court, the deposition of a witness named Man-

fred Stansfield, who resides in New York City. The defendant asserts that his personal presence in Court as a witness is desirable, since he is one of only two persons who have actual knowledge of the transaction the purport of which determines the outcome of this suit. The defendant further asserts that new information has been received with regard to material facts within the knowledge of this witness. Counsel for plaintiff has informed the Court the witness has stated he will come to testify in this Court if requested by the Court. The question is whether the Court should make the request.

"Ordinarily such a request by the Court should not be made, but counsel should be left exclusively to the remedies provided by law. In this case, however, the witness obviously is an important one, there are material questions about which he has not been examined, the witness
652 is willing to appear, and the trial of the case will not be delayed to await his appearance. Counsel for defendants have agreed that the deposition of the witness already read in evidence shall remain in evidence, that any testimony given in open Court by the witness will be considered as supplementary to the deposition and that the costs of the witness' appearance will be borne by the defendant, within usual Government limitations. Upon the basis of these stipulations, and, without indication of any order to the witness to appear, the Court is willing to request and hereby does request the witness to appear before this Court on Monday, December 20, 1948, at ten o'clock in the forenoon. If the witness appears as requested, examinations of him will be first made by counsel for defendant and followed by counsel for plaintiff."

The Court (continuing): I have made copies of that for each one of you, gentlemen. So that is the disposition of that matter, and we will adjourn until tomorrow morning.

(Accordingly, at 4:10 p.m. the trial was adjourned until 10 o'clock tomorrow morning, Wednesday, December 15, 1948.

* * * * *

656 PROCEEDINGS

Mr. Gallagher: Your Honor, if I may, I will read a stipulation which the parties have reached with respect to the criminal proceedings in Germany.

"It is hereby stipulated between the parties that a fine was imposed upon Wilhelm von Opel in the District Court in Frankfort, Main, on July 14, 1934, in connection with the gift agreement, in the amount of three and a half million reichsmarks.

"It is further stipulated between the parties that no objection will be made to Fritz von Opel's testifying he thought further payments would be demanded by the German Government pursuant to the provisions of the gift agreement."

The Court: Very well.

Accordingly,

FRITZ VON OPEL resumed the stand and was examined and testified further as follows:

Direct Examination (Continued)

By Mr. Gallagher:

Q. Now, Mr. von Opel, you have just heard that stipulation entered into between the parties, with respect to the fine imposed upon your father in the summer of 1934. I now direct your attention to the month of April,
657 1935. State what action, if any, you took at that time, in the light of this fine which had heretofore been imposed on your father. A. At this time I was confronted with a rather difficult situation. The lawyers of my father

insisted that the action of the German Government had been entirely illegal.

But it was in 1934; it was a time of so-called blood purge. Thousands or twelve hundred people had been shot, and it certainly was a time where might went before right. And I thought at the time, instead of fighting or trying to fight the Nazis, on a basis of legal opinion, it would be better to set up my affairs in such a way that even if my father would be forced to establish a Niessbrauch, that finally nothing would come out of it.

I had anticipated this situation already in the years previous to this date. Normally an investment of this size took up at least, let me say, one-third in cash, one-third in bonds, and the rest in marketable securities.

I thought, however, that the Nazis might jump on me, and thought it would be better always to stand in a position to throw my books open and show there was nothing of cash or marketable securities they could grab.

In Europe there is a saying, out of the reckless times of the Middle Ages, which says, "Nothing left so that even the Emperor can grab anything."

And I followed more or less, after 1933, this say-
658 ing, by arranging all affairs so that in no moment was there anything of cash or value which could be grabbed by the Nazis.

This economic arrangement, of course, was made—or, rather, let us say it this way:

On top of this economic arrangement, I used many other protective devices which permitted me, in times of need, to use kind of a delaying tactic and to throw the Nazis off my track.

Now, in 1935, I did not agree with Dr. Gross that it would be possible to straighten this matter out on a legal basis. He was of the opinion that the Niessbrauch was merely a personal claim against me.

He was of the opinion that the gift agreement clearly indicated the intention of the parties not to draw the Niessbrauch, and so that it was not only a personal claim against

me, but also a conditional personal claim. And it was so reported by my father in all of his official declarations, and as a property tax, and otherwise.

Mr. Burling: I move to strike the testimony concerning the opinion of some German lawyer, Your Honor, on the ground, first, it is opinion testimony; and, second, it is hearsay.

The Witness: We have letters to this—

By Mr. Gallagher:

Q. Don't state what Dr. Gross' opinion was—

Mr. Galagher: And we have no objection to the striking.

659 The Witness: I have Dr. Gross' letter of 1934—

Mr. Gallagher: We will strike that, Your Honor.

By Mr. Gallagher:

Q. Let us get down to April, 1935, Mr. von Opel. A. At this time I thought it was best to establish a Niessbrauch and to retain all dividends in American subsidiaries, not to pay out anything in the Overseas Corporation. And so if my father would have asked for his Niessbrauch, he would get 80 per cent of zero, or any small amounts I might let pass on to him, if necessary.

I further thought that it might be advisable that I disappeared for some months from the scene of action, because if I was not around, nothing could be done in the meantime. So I agreed with some friends of mine to sail with them, and go on an extended cruise to the Pacific.

At this time I asked that Dr. Frankenberg, I explained to him the situation and asked of him whether he was willing to act as my father's representative in these matters.

and he told me, he said he would be willing to do so, if my father asked him.

I sailed in, I think it was the middle of April, from Bordeaux to Jamaica; and before we really could get started on the cruise, I received a wire from my lawyers in New York to immediately come up to New York.

Mr. Burling: Will you fix the year, please?

660 Mr. Gallagher: This is the spring of 1935 we are talking about.

The Witness: So I had to interrupt my intended cruise, and I had to go to New York, and contacted there Davis Polk, who represented Overseas in the matter pending with the Treasury Department.

By Mr. Gallagher:

Q. What did you do when you contacted Davis Polk? A. I stated to him all facts in connection with Overseas—the gift agreement, and all the different setups which had taken place.

Mr. Burling: Excuse me. Davis Polk is not a human being, is he?

Mr. Gallagher: John W. Davis. The firm was Davis, Polk, Wardwell, Gardner & Reed, at the time.

Mr. Burling: Is this Mr. Davis personally?

By Mr. Gallagher:

Q. John W. Davis personally, at the time? A. Yes, at the beginning.

Mr. Burling: Thank you.

By Mr. Gallagher:

Q. Alright; you say you made a statement to them of the whole situation? Is that correct? A. Yes, sir.

Q. And what happened after you made your state-
661 ment to them? A. They then filed an application to the Treasury Department for release of this gold.

Q. Did they prepare an affidavit for you? A. Yes, sir.

Q. And that is the affidavit we are referring to as Defendant's Exhibit 8? A. Yes, it is.

Q. And you stated to them the facts that they have incorporated in that affidavit? Is that correct? A. Yes.

Q. After you had signed the affidavit, and it had been filed with the Treasury, I believe you previously stated that the negotiations subsequently failed. Is that correct? A. Yes, I think so, yes.

Q. Did you remain in the United States? A. No, I did not. I left immediately.

Q. And where did you go? A. I went first to Switzerland, and then to Germany, to speak to my father about this matter.

Q. Do you remember approximately when you saw him? Was it still that summer? A. It was in the same summer, yes, the summer of 1935.

Q. Did you have any discussion with him at that time about this Niessbrauch and the fact that you had
662 appointed Frankenburg to be his agent? A. Yes, I told him what I had done, and the reasons for it. And he stated that he didn't want it this way, that he in the meantime had made up his mind and said he would rather fight it out than have every year the same problem, not only with the Foreign Funds Control, but also with the property tax and the income tax.

He had in the meantime several discussions with Dr. Gross.

Q. Who is Dr. Gross? A. Dr. Gross was his lawyer. And the political situation had cooled off in the meantime.

Q. Yes? A. And Dr. Gross had convinced him that there was a chance to legally waive all remnants of this usufruct.

Mr. Burling: If your Honor please, I object to any testimony from this witness as to what Wilhelm von Opel said about waiver, on the ground that Wilhelm von Opel was interrogated by the plaintiffs. They took his deposition, and they omitted to ask him any question whatsoever about waiver. The first time there is any testimony about waiver in this case is after Wilhelm is dead.

Mr. Galagher: Your Honor, that is not the fact. The question of the waiver was brought up at the same time at Wiesbaden, with Dr. Gross present there, who is the
663 attorney who expressed to the Reichsbank the entire situation.

The Court: I suppose if he objects to what was told to the witness, I will have to sustain it as hearsay.

Mr. Burling: If you will show me the page reference to the deposition of Wilhelm von Opel, if there is any reference whatever to waiver.

Mr. Gallagher: I didn't state there was a waiver there. I stated that in Dr. Gross' statement taken at the same time at Wiesbaden.

Mr. Burling: If your Honor please, I don't mean to press a mere hearsay objection. I know Your Honor's position. But I do object to hearsay from Wilhelm, when they had every opportunity to get that and didn't do it. And they now bring it in after his death.

The Court: I will have to sustain it, if it is hearsay. I sustain it on that ground.

By Mr. Gallagher:

Q. Were you present with your father and Dr. Gross during the summer and fall of 1935, at the time the question of a waiver of the Niessbrauch was discussed? A. Yes, I was.

Q. Did you discuss that waiver with your father? A. Yes.

Q. Did you discuss that waiver with Dr. Gross? A. Yes, I did.

664 Q. And you were present when it was discussed? A. Yes.

Q. And Dr. Gross was present when it was discussed? A. Yes.

Q. And was your mother aware of this fact, and was she advised? A. Yes, certainly. She wasn't always present, but in some of the discussions.

Mr. Burling: I renew my objection, Your Honor, on the ground that Marta von Opel was examined by deposition and not a single word was asked her about waiver.

The Court: Is this testimony you are trying to bring out an actual waiver that was made by Wilhelm von Opel in his presence?

Mr. Gallagher: Yes, Your Honor.

The Court: I thought he was relating what the father told him.

Mr. Gallagher: Oh, no. This was in his presence, and as a result of the discussion by the parents in the presence of Dr. Gross, who also will be a witness here, Dr. Gross thereafter advised the Reichsbank of these facts and, as we will prove through his testimony, did so so that the parents would not get into further trouble.

The Court: You are trying to prove an oral waiver by the father?

665 Mr. Gallagher: Yes, Your Honor.

The Court: I think his testimony would be admissible, notwithstanding the fact that the the other man did not testify to it. You could argue as to the weight of the testimony. And the fact that the mother and father didn't testify to it, if they didn't, that would be a subject for you to argue later on. But I think the witness can tell about it.

Mr. Burling: Yes, Your Honor.

By Mr. Gallagher:

Q. Will you state to the Court, Mr. von Opel, the nature of that discussion between your father and Gross, and you, and all the circumstances surrounding that. This is in the summer of 1935 and the fall of 1935, as I recollect? A. Yes. Dr. Gross explained, in writing and in words, the legal position. He emphasized the fact that at the time of the gift no right in rem had been established.

He further emphasized that even this personal claim, which had been established, was apparently a conditional claim, namely, based upon the desire of my parents to receive a payment.

And my father, of course, we are no lawyers and we had to depend on counsel's advice. He gave him free hand in any way to get rid of this Niessbrauch. He told Dr. Gross in my presence:

"It isn't a question for me how you to do that. I
666 am only interested in the result. I don't want to be bothered with this Niessbrauch any more. I don't want to hear of this word Niessbrauch. Get rid of this thing."

And I must say this word Niessbrauch was a main topic in our conversation for years to come, until 1937 the Reichsbank indicated they would take no action in this matter.

Mr. Burling: I move to strike any testimony of this witness as to what the Reichsbank indicated it would do.

The Court: Well—"until 1937". The rest will be stricken.

By Mr. Gallagher:

Q. As a result of these discussions, was Dr. Gross given any directions? A. Yes.

Q. And, as I understand it, they were to try to get rid of this Niessbrauch? A. Yes, certainly.

Q. Do you know what Dr. Gross did thereafter? A. Yes; I always was informed on the matter. He first addressed letters to the local branch of the Foreign Funds Control.

Mr. Burling: If Your Honor please, this is pure hearsay.

The Court: Yes, I think it is.

667 Mr. Gallagher: All right, Your Honor. I will withdraw it or strike the answer.

By Mr. Gallagher:

Q. Do I understand you correctly, Mr. von Opel, that you and your father and mother, however, had agreed that their rights to the establishment of the Niessbrauch were gone, had disappeared? Is that correct?

Mr. Burling: I am sorry to be so contentious this morning, Your Honor, but Mr. Gallagher should not lead the witness or summarize his testimony.

The Court: I think you will have to let his testimony stand on that, Mr. Gallagher, unless you want to ask him specific questions on it.

Mr. Gallagher: Let it stand at that point? All right, Your Honor.

The Court: What was this date of the discussion with the Doctor and the mother and father?

The Witness: That was the summer and fall of 1935, Your Honor.

By Mr. Gallagher:

Q. Can you state whether or not your parents agreed that the Niessbrauch should be waived or not? A. Yes, certainly.

Q. What did they agree? A. They agreed that they only had a personal claim against me, conditioned
668 upon their own distress. They would only ask for their support in case they would financially be unable to maintain themselves.

Mr. Burling: Will you fix the date of this agreement?
Mr. Gallagher: This is the summer or fall of 1935.

By Mr. Gallagher:

Q. Is that correct? A. Yes.

Mr. Gallagher: That is as definite as we can place the date, Mr. Burling, because the first action we have any written evidence of is Dr. Gross' letters of October, 1935, to the Reichsbank.

By Mr. Gallagher:

Q. Now, after your parents had agreed to abandon the Niessbrauch under this gift agreement, is it my understanding Dr. Gross' employment was solely to try to gain approval from the Reichsbank for this waiver? Is that correct?

Mr. Burling: I again object to the repeated leading of counsel's own witness. It is not necessary to summarize the testimony, Your Honor.

The Court: I guess he had better tell it in his own way. Ask him what occurred.

By Mr. Gallagher:

Q. State the purpose of the employment of Dr. Gross.
A. As I stated it before, his instruction was to get
669 rid of the Niessbrauch in any legal way possible.

Mr. Gallagher: Will you excuse us just a moment, Your Honor?

By Mr. Gallagher:

Q. After that period of time, Mr. von Opel, were you informed of the result of Dr. Gross' action in this respect? A. Yes, I was.

Q. And what was the nature of that? A. Dr. Gross considered it—

Q. No, not what he considered.

Mr. Burling: If the Court please, I object to this witness testifying what Dr. Gross or someone else told him that Dr. Gross or someone else did.

The Court: I sustain it.

Mr. Gallagher: All right, Your Honor.

By Mr. Gallagher:

Q. Mr. von Opel, where was the stock of Uebersee at this time? A. In the beginning of 1935, and I think all through 1935, it was kept in a safe in a Swiss bank in Zurich.

In the beginning of 1936 it was taken out and deposited with Adler & Company for the account of Frima.

Q. And did the stock remain thereafter with Adler & Company for the account of Frima? A. No. I sold this stock under a put and call option to about fifteen
670 Swiss people.

Q. I show you a letter of June 25, 1936, signed by the Union Bank of Switzerland, and ask you if you can state what that document is—Plaintiff's Exhibit 78 and 78-A. A. That is a confirmation signed by the Schweizerische Bankgesellschaft, stating again the agreement and their actions.

Mr. Burling: Will your furnish us with a copy of that exhibit?

Mr. Gallagher: Yes. I thought he had furnished you one; I am sorry. That is the June 25, 1936, letter.

I now offer Plaintiff's Exhibit 78 and 78-A in evidence.

The Court: All right.

(The documents referred to were marked and received in evidence as Plaintiff's Exhibit Nos. 78 and 78-A.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 79-A for identification, a statement of Adler and Company stating therein that—

"We notify herewith that we received from Frima Trust Establishment, Vaduz on May 30, 1936

"97 shares of Overseas Finance Corporation, Ltd."

Will you state whether or not that is the receipt for the shares? A. Yes.

671 Mr. Gallagher: I now offer this, Plaintiff's Exhibit 79 and 79-A.

(The documents referred to were marked and received in evidence as Plaintiff's Exhibits 79 and 79-A.)

By Mr. Gallagher:

Q. Did you ever repurchase these shares of Uebersee, Mr. von Opel? A. Yes, I did. I regarded the transaction as a kind of insurance. It cost me about $10,000 additional expenses to keep this agreement going. But when war became imminent, I think it was in November, 1941, I then thought that in America, as the blocking had already taken place, and I thought there was no danger that the Nazis might undertake further action against me now. So I repurchased the stock.

Q. I show you what purports to be a deposit statement, Plaintiff's Exhibit 80 and 80-A, of Adler and Company,

and ask you if this is a deposit statement, reflecting the repurchase of the Uebersee shares, and the fact that Adler and Company was holding them on deposit to Frima's credit? A. It shows the entire transaction as reflected by the books of Adler. It shows the delivery to the Bankgesellschaft, and also the return of the shares from the Bankgesellschaft.

672 Mr. Burling: I am afraid, if Your Honor please, there is again a mixup in the numbering on Plaintiff's documents. I think the chart is marked Exhibit 80; is it not?

Mr. Kenny: No; that is now 81.

Mr. Burling: Thank you.

Mr. Gallagher: I now offer, Your Honor, Plaintiff's 80 and 80-A.

(The documents referred to were marked and received in evidence as Plaintiff's Exhibits 80 and 80-A.)

By Mr. Gallagher:

Q. Mr. von Opel, did you ever pay a capital gains tax to the United States as a result of the gift made by your father? A. Yes, I did.

Q. Will you state the amount and what took place, in assessing that amount, and the final terms? A. I was first assessed an amount of eight hundred, I think, $850,000. And my lawyers asked me to go to Germany and prove by documents the value of the shares at the time of the gift; and then, after all those documents were in, tax was assessed, if I remember correctly, around $130,000 or $135,000.

Q. And it was finally paid? A. Yes.

673 Q. Now, Mr. von Opel, was a tax paid on this gift in Germany? A. Yes, certainly. The tax declaration was made three months after the gift, at the end of this three months' period we had under the law.

And a tax of slightly above two million reichsmarks was paid on it.

Q. Now, Mr. von Opel, did the Uebersee Korporation ever engage in doing business with an enemy country or an ally of an enemy? A. No, sir.

Q. Did the Uebersee Korporation ever operate mines directly or indirectly in Hungary after December 6, 1941? A. No, sir.

Q. Did you ever operate mines directly or indirectly in Hungary after December 6, 1941? A. No, sir.

Q. Did you ever engage in doing business in Hungary after December 6, 1941? A. No, sir.

Q. Now, did your father or mother ever make any demand on you for income, interest, dividends, or any part of the gift or the proceeds therefrom? A. No, sir.

Q. And did you ever pay to your mother or father any income, dividends, interest, from the gift or its proceeds or any part therefrom? A. No, sir.

674 Mr. Gallagher: That is all.

Mr. Burling: May I ask Your Honor a question as to time? Your Honor expressed the desire or the hope that the case be completed prior to Christmas, that is, prior to the close of business on the 23rd, and said that Your Honor would hold court longer hours if it seemed necessary to accomplish that end.

It seems to me that we can say it will be necessary to sit for longer hours, if we are to be through by the 23rd. My friends have indicated they desire to cross examine at least one of my witnesses at great length, and I am afraid this cross examination will take at least eight hours.

The Court: We will see how we go.

Mr. Burling: Yes, Your Honor.

The Court: How many more witnesses do you have, Mr. Gallagher?

Mr. Gallagher: We have two, and Dr. Kronstein on the nationality. I don't believe our witnesses would take over—

I believe but for the cross examination we would be finishing today.

The Court: All right.

Cross Examination

By Mr. Burling:

675 Q. Mr. von Opel, I hand you some pieces of paper and ask you if you can recognize them. A. Yes. These are German so-called paper marks, printed during the time of the German inflation, between 1920 and 1924, apparently.

Q. Those are the old marks which preceded the reichsmarks? Is that correct? A. Yes.

Q. Now, will you count them and see if I have not handed you fifteen million marks? A. Yes, it is possible.

Q. Now, fifteen million marks, before World War I, would have been worth approximately three and a half million dollars. Is that correct? A. That is possible. At the time of the stabilization, I think one dollar was worth one billion reichsmarks.

Q. One old mark, wasn't it? Wasn't the exchange a billion on the marks for one reichsmark? A. Approximately. It doesn't make much difference one way or the other.

Q. No, but I would just like the answer to my question, if you please. A. Yes.

Q. In other words, before World War I, the number of marks I hold in my hand would be worth about three and a half million dollars? A. That is possible.

676 Q. And fifteen million old marks, which were stabilized for the new reichsmark in 1924, at a rate which would have made this amount of currency worth one and a half pfennig? Isn't that true? A. Yes, that is possible.

Q. And that would have been less than one American cent? A. Yes, that is possible.

Q. In other words, this paper is totally worthless, except as a curiosity? A. It is a fact that the paper was worth more than the amount printed on it.

Q. Under the escrow agreement between your father and General Motors, before the gift, before October 5, if he had put the 600 Opel shares to General Motors, he would have received back, if he had received marks, about fifteen million marks? Isn't that so? A. Yes, depending upon the day when he exercised the option.

Q. You have testified that in late September or early October, 1931, you and your father had a discussion concerning the escrow agreement. A. Yes.

677 Q. Didn't you and your father have in mind the fact that within the decade preceding that conference, 15 million marks had become totally worthless, due to the inflation? A. Definitely. Every German was aware of this fact.

Q. And the possibility that the assets, the 600 shares of Adam Opel, if they were valued in marks, that is, if he received marks for them, from General Motors, under the escrow agreement, those marks might become totally valueless once more was in your mind, was it not? A. If it wasn't based upon a gold clause or a dollar exchange rates, yes.

Q. Now coming to another subject, you testified, did you not, you were apprehended as an alien enemy in February, 1942? A. Yes.

Q. And this took place in Palm Beach, Florida, did it not? A. Yes, sir.

Q. And your wife was apprehended at the same time? Is that correct? A. Yes, sir.

Q. And you were taken for temporary detention to Miami? Isn't that so? A. Yes, sir.

Q. And then there were proceedings before an alien hearing board in Miami? A. Yes, sir.

678 Q. And, after that, the Attorney General issued an order directing that you and your wife be interned? Is that correct? A. I guess so.

Q. And you and your wife were then taken to a family internment camp at Seagoville, Texas? A. Yes, sir.

Q. Prior to your going to Seagoville, had you not been in touch with Colonel Mittler of the Army? A. No.

Q. When did you first communicate with Colonel Mittler? A. When I was taken back to Miami for my first rehearing.

Q. I see. You testified, did you not, when you were first apprehended and you were in Miami, conditions were very unpleasant? A. Within those quarters, yes. It was not a camp. It was a professional building, and we were living 60 or 70 men with one toilet and one shower. I must say it was rather unpleasant.

Q. When you were taken back to Miami for a rehearing, you found that the detention station had moved, didn't you? A. Not only moved; it was entirely given up.

Q. Well, the place where persons were detained in
679 Miami was a different place, wasn't it? A. Yes; it was the quarters of the Border Patrol.

Q. The Border Patrol, and they were quartered in what had previously been a very large private house? Isn't that so? A. Yes.

Q. It was a house on Biscayne Bay, wasn't it? A. Yes, sir.

Q. And there was no fence around the house, was there? A. There was no fence, but there were about 20 or 30 border patrolmen.

Q. But I will ask you just to answer my questions, if you will. A. Yes.

Q. There was no fence? A. No.

Q. And there was a large lawn running between the house and the waters of Biscayne Bay? A. Yes, sir.

Q. With palm trees around the house? A. Yes; I remember it was very pleasant.

Q. And you and your wife had a pleasant bedroom overlooking Biscayne Bay, did you not? A. As well as you can regard a prison pleasant, yes, it was pleasant.

680 Q. I am talking about the physical conditions under which you lived. A. It isn't only the physical conditions which count, but also the moral conditions.

Q. Well, we can discuss philosophy perhaps some other time. Now I want to know about the physical conditions.

Physically, you had a bedroom in what had formerly been a large, luxurious house, did you not? A. Yes.

Q. And you and your wife did a lot of cooking in your room, did you not? A. Yes.

Q. Was the door to your bedroom ever locked from the outside? A. No; but there was a matron sitting in front of it day and night.

Q. All the time you were there? A. Yes. They had three matrons in shifts of eight hours.

Q. Yes; but that matron was wandering around the entire establishment, was she not? A. No; her desk was right in front of our door.

Q. And she was not sitting there day and night, was she? A. I wasn't in charge of the matrons, Mr. Burling.

681 Q. But you and your wife were free to walk around the house or the grounds as you chose, were you not? A. Yes; but the matron was always ordered to follow us out, either the matron or the board patrolman.

Q. And there were no eating facilities for providing you with food in this board patrol station, were there? A. No. The few people which were—

Q. Please just answer my question, Mr. von Opel, and don't volunteer.

The answer was no, wasn't it? A. No.

Q. So that when it came time for you to eat, you were driven in a board patrol car in to a restaurant where you were provided with meals? Isn't that true? A. Yes, and it is also true—

Q. Will you please answer the questions and say nothing further. Your own counsel can bring out anything he sees fit, in addition to my own examination.

In other words, the conditions of detention in Miami were very much more pleasant than they were at Seagoville, Texas? Isn't that so? A. Definitely so, because we were alone and not among others.

Q. I must ask you again to answer my question: Were they not physically more pleasant?

682 Mr. Gallagher: If Your Honor please, I think he had not said that.

(To Mr. Burling:) You added the "physically" and I think the answer ought to stand, Your Honor.

Mr. Burling: I think the answer should be yes or no.

The Court: I don't know the purpose of this line of examination.

Mr. Gallagher: Neither do I, Your Honor.

Mr. Burling: We will come to it again, Your Honor.

By Mr. Burling:

Q. Isn't it the fact that while you were in Miami the second time, you gave suggestions to Colonel Mittler for the purpose of causing Colonel Mittler to represent that you should be kept in Miami rather than returned to Seagoville? A. That is not the fact, Mr. Burling—if I can answer the question correctly—

Q. You have answered it. You say it is not correct.

Mr. Gallagher (to the witness): Do you wish to state anything further, Mr. von Opel?

The Witness: Yes.

Mr. Burling: Mr. Gallagher, I wish you would stop interfering in my cross examination.

The Court: I think you will have to object, gentlemen. Otherwise you can make a note of the point and then ask him on redirect.

683 By Mr. Burling:

Q. After a while, it is the fact, is it not, you were moved from Miami and taken to a camp near New Orleans? A. Yes.

Q. You said yesterday it was in New Orleans and you meant to say, did you not, it was in Algiers, across the river from New Orleans? A. Yes, sir.

Q. And you referred to that camp as being known as the Jewish internment camp, did you not? A. Yes; that is what it was called, by the people living in there.

Q. Is it not the fact that you were not interned in any camp, anywhere, with any person of Jewish origin who had been residing in the United States at the time of the outbreak of the war? A. I don't quite get this question. You mean all people interned were coming from the outside?

Q. There were no persons, no Jewish persons in Algiers, except persons who were brought from Latin America. Isn't that so? A. Yes, you are right.

Q. Thank you. Now, will you state what your understanding was as to why you were sent to that camp? A. I didn't quite get it.

684 Q. What was your understanding as to why you were sent to that particular camp? A. My understanding was that the Immigration Department had found out that it was not safe for me to go back to Seagoville, Texas.

Q. And what was your understanding as to why the Immigration Service thought it would not be safe? A. I think several people had reported to the Immigration Department to this effect.

Q. You don't claim that at this time you yourself were an anti-Nazi, do you? A. I don't know what you understand by "anti-Nazi". I was a liberal all my life.

Q. From 1933 until the time you were moved to Algiers, you were not opposed to the Nazi regime in Germany,

were you? A. I don't understand what you mean by "opposed", you say. It would have been ridiculous to shout from the rooftops in Europe that I was against it. It would only have endangered my father. But everybody who knew me, and all of my friends, knew exactly where I stood.

Q. Now, between 1933 and 1939 you had occasion to be in Germany several times, did you not? A. Yes, sir.

Q. What does the word Parteitrag mean? A. Parteitrag means a yearly gathering in Nuremberg.

685 Q. A yearly gathering of what? A. Of the Nazi Party.

Q. Do you not know of your own knowledge it was the chief Nazi ceremonial demonstration? A. Yes, it was.

Q. And that was held in Nuremberg, was it not? A. Yes, sir.

Q. You know, do you not, that your wife had dinner with Adolph Hitler at Nuremberg on the occasion of the Nazi Parteitrag in 1938? A. Yes. She has clearly stated why and how.

Q. You know that also at that occasion a woman named Leni Riefenstahl was present, do you not? A. Yes, sir.

Q. And Leni Riefenstahl was very prominently associated—

Mr. Gallagher: Your Honor, I would like to interrupt Mr. Burling at the moment and ask what the purpose is of this whole line of inquiry. We don't see its relevancy in this matter, and it is just consuming time, it seems to me.

Mr. Burling: Its relevancy is, Your Honor, that I seek to attack the credibility of the witness. I don't believe persons opposed to Adolph Hitler were also having dinner with him at the occasion of the Nazi Parteitrag in Nuremberg.

The Witness: I never had dinner with Adolph
686 Hitler, and I never met him.

Mr. Burling: Or that their wives were having dinner with him.

Mr. Gallagher: You don't contend this property was owned by Mr. von Opel, do you, Mr. Burling?

Mr. Burling: No. I am coming to the next point, if you will permit it.

By Mr. Burling:

Q. And Leni Riefenstahl was very prominently associated with Adolph Hitler in the papers, was she not? A. She was just denazified, to my own great surprise, I must say.

Q. Will you answer my question? A. What is the question?

Q. Wasn't she very prominently associated with Adolph Hitler? A. I couldn't say so. She was a movie producer and she made at one time a film on the war. But apparently she is not regarded as such; otherwise she would not have been denazified.

Q. Isn't it true that every person familiar with German doings knew that Leni Riefenstahl was very close to Adolph Hitler? A. If you depend upon newspaper gossip, many newspapers called her Adolph Hitler's girl friend.

687 Q. And she visited you at your home in St. Moritz, did she not? A. Yes; I have known her since 1920 or 1925.

Q. And a man named Hans von Bibra was a guest in your house at St. Moritz? A. Yes.

Q. And do you know he was the head of the Nazi Party organization in Switzerland? A. I didn't know it at the time. And you know perfectly well the circumstances how I met this man, namely, to get my release from the German Army after I was mobilized. I tried everything to secure my safety.

Q. Now we will go to another topic. Going back to the questioning which Mr. Gallagher conducted yesterday, relating to your position in Adam Opel prior to the General Motors purchase. A. Yes.

Q. The negotiations for the sale were commenced in 1928, weren't they? A. In the fall.

Q. In the fall of 1928? A. Yes.

Q. And you were 29 years old at that time? A. Yes, I was.

Q. You were one of the most prominent automo-
688 bile racers in all Germany then, weren't you? A. I wouldn't say that. My racing days were between 1920 and 1923. Later on I drove a few speedboat races, but I retired from automobile racing.

Q. I see. You were an airplane pilot at this time, were you not? A. In connection with my rocket experiments, I wanted to fly the plane myself, and I learned to pilot a plane.

Q. And you competed in free balloon races, did you? A. No, with one exception. I made my pilot license because I was interested in all those things. And before the Nazis came to power, I decided to fly a balloon in the Gordon Bennett race, as a co-pilot.

Q. That is the international free balloon race? A. The international free balloon race.

Q. You were the co-pilot of one of the German balloons? A. Yes; this balloon was entered, I think, by the German Balloon Association in 1932.

Q. And you were present when Mr. Gallagher made his opening statement in this case, I take it? A. In regard to what, Mr. Burling?

Q. You heard Mr. Gallagher's opening statement, did you not? A. Yes.

Q. And he stated, I believe, that you were widely
689 regarded as an athlete in Germany at this time? A. Yes, I can say so.

Q. And I don't mean to ask you to be immodest, but would you agree that you had a position comparable to that held by Gene Tunney in this country at that time? A. Our business required to be popular. We had to sell

bicycles and automobiles, and it could only be done by a lot of personal advertising.

Q. And you had time to engage in all these activities, and yet by the age of 29 become the general manager of the largest automobile works in Europe? Is that your testimony? A. My sports activities, Mr. Burling, were restricted to Sundays. And I will be pleased to prove by a newspaper clipping that even in the biggest automobile race, the first automobile race after the war in Germany you see, I was in Berlin in 1931, when the race which I won—that they had to install a special training day for the Opel crew, because I had no time to go there and train with the other drivers.

Q. What position do you say you held in the plant just prior to the sale of 1929? A. At this time my father was chairman of the board of directors. My uncle, Fritz von Opel, my godfather, was vice chairman.

Under German law, no member of the board can be an officer of a corporation. And I was, therefore, the legal head of the Opel corporation.

690 Q. What position did you hold? A. As alleiniges Vorstandsmitglied, which means the sole manager—or we will call it "general manager", if you like.

Q. But your father was chairman of the board? A. Yes, sir.

Q. Was he active in the affairs of the Adam Opel? A. Yes, sir. Normally it would not have been possible. But it was a family enterprise; so certainly there was a close relationship between my uncle and my father on one side, and me as the legal head of the corporation.

Q. Do you think that your father was in a position to know who the managers were, in 1929? A. Oh, certainly.

Q. Have you read your father's deposition in this case? A. Certainly.

Q. By the way, did you say that you raced for Germany in this balloon race before the Nazis came into power? A.

No. I said the balloon was entered before the Nazis came to power.

Q. But you represented Germany after they came to power? A. The race in 1933, in the summer, in Chicago.

Q. After the Nazis came into power? A. Yes;
691 they had come to power previously.

Q. As to your father's testimony in the deposition concerning the position you held, are you familiar with it? A. I don't know.

Q. Then I will read it to you, reading from page 6 of the Wiesbaden deposition—and this is the questioning of your father relating to you:

"And what was his position or capacity at the firm in 1929?

"Answer: In 1929 he was an engineer in the firm.

"Question: In 1929 some interest in the Opel firm was sold to the General Motors Corporation of the United States, was it not?

"Answer: Yes.

"Question: Well, just before the sale of the interest in the firm to General Motors, what position did Fritz have with the firm?

"Answer: A leading position with the firm in the production branch. He was, furthermore, a member of the board of directors."

Now, is that testimony of your father's correct or incorrect? A. I don't remember that I was a member of the board. That doesn't seem possible to me. He must have made a mistake there. Because as I remember under German law, no officer could be a board member. But
692 we always had our meetings together, you see. It was a family enterprise, Mr. Burling. We didn't stick to any formalities. And certainly my father had the say in this enterprise. I never claimed anywheres that I could do anything I pleased, you see. We were all cooperating and working together.

Q. But your father characterized your position there as

that as having a leading position in the production branch. Do you think that is an accurate characterization? A. Production was everything with an automobile or bicycle corporation. And if you object to the use of the word "engineer", I always signed, you know, in registration papers, as an engineer, and my father always signed as a "Kaufmann", or you would translate the Kaufmann as merchant. Those were the titles good enough for us at the time.

Q. Now, coming to another topic, after the purchase of the 80 per cent of the Opel shares in 1929, you came to the United States, did you not? A. Yes.

Q. And you and your wife lived in hotels in various American cities for about a year? Is that correct? A. Yes.

Q. And then you went to Antwerp? Is that correct? A. Yes.

Q. Where did you live in Antwerp? Will you give
693 us the address? A. We lived in Brascard, which is a small town outside of Antwerp. I would rather call it a village. If I am correct, I think the address was Leopold Road, or something of the sort.

Q. Did you buy a house in Brascard? A. No; I rented a house.

Q. You rented a house? A. Yes.

Q. Was it a furnished or unfurnished house? A. It was a furnished house.

Q. And did you rent it on a lease? How did you rent it? A. I really don't know. Those details my wife took care of, and I never signed a lease.

Q. Did you have also an apartment in Berlin at this time? A. No, sir.

Q. Did you ever have an apartment in Berlin? A. No.

Q. Can you identify the address "Bismarck Strasse 33 Charlottenberg"? A. Yes.

Q. What is that address? A. That is a business and office building. It is called the so-called Elektro
694 Verbands Haus, an office building where all the electrical concerns have their headquarters.

Q. Did you have an office in that building? A. No.

Q. Did you have occasion to go frequently to that building? A. My father had an office in that building.

Q. Did you have occasion to go there frequently? A. Yes, I went there occasionally.

Q. You were asked yesterday about your estimate of your father's wealth in 1931. A. Yes.

Q. Did I understand you to say that you thought that taking out the 600 Opel shares, the remainder would be in the neighborhood of 25 million marks? A. I think I stated that at this time his property tax assessment was in the neighborhood of, I think, 21 million reichsmarks.

And I further explained that under German law that does not represent the real value, but a somewhat lower figure.

Q. I show you Plaintiff's Exhibit 25, which purports to be the 1931 property tax return of Wilhelm von Opel, and ask you to examine it and see if you can state from that what your father's return as his property in the year 1931 was. A. It says the total value of other property,
695 19.9 million, which is close to 20 million. But as it says total value of other properties, there must be something else. So I think it is approximately the figure I gave you.

Q. Is that figure before or after you take out the 600 Opel shares? A. Which is the date of the declaration? It must have been disregarding my 600 shares.

Q. Doesn't that tax return speak as of January 1, 1931? A. It is unquestionably not an original.

Q. I show you Plaintiff's Exhibit 26, which purports to be the assessment.

I show you Plaintiff's Exhibit 25-A and Plaintiff's Exhibit 25-B; and 25-B, in the original, was an exhibit to the return 25-A. A. Yes.

Q. And I invite your attention to the item indicating six million reichsmarks Adam Opel Aktien, valued at one million eight hundred thousand. A. Yes. If you deduct

this one million eight hundred thousand, then the value of the other property, as it says here, is eighteen million.

Q. So that as of January 1, 1931, the tax value of your father's property, other than the 600 Opel shares,
696 was 18 million marks? A. Apparently. But as I explained to you, the assessed valuations are considerably lower than the real valuations.

Q. That is your best estimate as to the real value of the property which had the assessed value of eighteen million? A. You see, for instance, here in the Opel shares there you have a good example. The Opel shares are valued at 1.8 million. The escrow agreement said they could be sold at sixteen or seventeen million. So they are at about 10 per cent of the valuation. I don't know how far that goes for other securities listed in it.

Q. What is your best estimate, the best you can do, to estimate what your father's net worth was, not counting the 600 Opel shares, in the year 1931? A. It is beyond me to guess at it.

Q. You did guess at it yesterday, didn't you? A. No. Yesterday I said I thought the tax declaration at the time was about twenty or twenty-two million marks assessed values; and if I remember correctly, it might be the 1932 or 1933 assessment. One of these assessments shows these figures, I am sure.

Q. So that your testimony now is that you are unable to make any estimate as to what your father's real net worth was? Is that right? A. I didn't say any estimate. I gave you the minimum. What the maximum was
697 is just a question of imagination.

Q. You are unable to make any reasonable estimate as to what your father's real net worth was? Is that right? A. The least he had was, as the tax declaration shows, about twenty million.

Q. But you are unable to make any better estimate as to what the real value was? A. That would be mere guesswork. But I thought it considerably higher.

Q. Well, how much higher? A. I would say at least five million, maybe ten millions. It is a mere guess of mine.

Q. So your present statement, if you agree that the tax rate shows a tax estate of about eighteen million, that it would be from twenty-three to twenty-eight million? A. You can figure it out backwards in the following way:

He had 900 shares of Opel of his own. The price he received then was 24 million marks, and of course in addition he had personal property.

So at this time I guess he must have been worth, let us say in round figures; 30 million reichsmarks, less taxes to be paid, of course.

Q. And the 600 Opel shares were worth about fifteen and a half million, under the escrow agreement? Is that
698 right? A. Yes; as I recall, the escrow agreement has had different rates, according to the time of sale.

Q. Assuming you would sell it in 1931— A. At the time of sale, it was 26 million and I guess 650 reichsmarks.

Q. Twenty-six million? A. Pardon me—26,650 reichsmarks per 10,000 shares.

Q. But the total is somewhere between fifteen and sixteen million reichsmarks? A. Yes, that is correct.

Q. And if we add that to your estimate, to your guess that your father's net worth otherwise was thirty million, that would bring you to a total net worth, before October 5, of approximately forty-five million? A. I didn't say thirty million. I said one could imagine twenty-five or maybe even thirty.

Q. I see. A. As a rough guess, I would say forty million.

Q. Now, there were living in 1931 eight grandchildren, either direct heirs of Adam Opel? Is that correct? A. Yes, that is correct.

Q. And there were living two sons of Adam Opel, your father and your Uncle Fritz? A. And my uncle, yes. My uncle was unmarried.

699 Q. He had no children? A. And he had no children, no.

Q. And you have one living sister? A. Yes.

Q. And no brothers? A. No.

Q. And your six first cousins had all taken their shares of the Opel inheritance by inheritance, hadn't they? A. Yes.

Q. That is, by the death of their parents? A. Yes. Some of them had inherited, say, apart, even before the incorporation of the Opel enterprise.

Q. But they took by inheritance? A. They took by inheritance, yes, certainly.

Q. And your sister had received a dowry or marriage settlement of 500,000 marks? Is that correct? A. She was married to a very wealthy man, a friend of our family, and she received several gifts, one in addition to her dowry, in 1933. If I remember correctly, it was an additional million or so.

Q. You are familiar with your father's will, are you not? A. Yes, I am.

Q. And there is no mention in the will of any gift other than the gift of the dowry, is there? A. I think it
700 mentions gifts received. It doesn't stipulate the single gifts.

Mr. Burling: I ask that Defendant's Exhibit 32 and 32-A be marked for identification.

(Accordingly, the last will and testament of Wilhelm von Opel, the English translation, and the German, was marked for identification as Defendant's Exhibit 32 and 32-A respectively.)

By Mr. Burling:

Q. Will you examine, please, Defendant's Exhibit 32-A and state whether that is a certified copy of your father's will? A. Yes, I think it is.

Q. Will you turn to paragraph 4, please, or section 4. Will you tell me if I am translating correctly—

"In the event that any claims for a compulsory portion are made, the sum of 500,000 reichsmarks plus 5 per cent interest, given to our daughter Elinor as a dowry on the occasion of her marriage, is to be charged against her or her descendants' share of the inheritance, or the compulsory portion, as the case may be." A. Yes.

Q. (Continuing)—

"The same arrangement shall be effective in re-
701 spect of the current allowances which our daughter Elinor is presently receiving." A. It doesn't say "allowances". It says "laufenden zuwendungen", which means everything given to her.

Q. I see—

"The gift of nominal 600 shares of Adam Opel A.G. made to our son according to the gift agreement of October 5, 1931, shall be charged against his or his descendants' share of the inheritance, in accordance with the provisions stipulated in the gift agreement with respect to the accounting"—

Then I will not read any more.

Mr. Gallagher: What is the date of that will?

By Mr. Burling:

Q. What is the date of this will? Is it not November 20, 1938? A. Yes, I think it was a new will of my father.

Q. Does this refresh your recollection as to whether your father made a gift, after your sister's marriage, of a million marks to your sister? A. It isn't specifically mentioned in there. I told you from the beginning I don't remember it was mentioned, only it says in a general way that everything given to the sister should be accounted for. And that certainly would include the gift of
702 1933.

Q. What is the gift of 1933? A. A gift of my father to my sister.

Q. What is the amount of that gift? A. If I remember correctly, it was around a million reichsmarks.

Mr. Burling: Will Your Honor give me a moment? I offer Defendant's Exhibit 32 and 32-A in evidence.

Mr. Gallagher: No objection.

The Court: It will be received.

(The documents previously marked for identification Defendant's Exhibits 32 and 32-A were received in evidence.)

By Mr. Burling:

Q. How do you translate a word in paragraph 4 of the will—"laufenden zuwendungen"?

Mr. Gallagher: Would you mind handing it to him, please?

The Witness: "Laufenden zuwendungen."

By Mr. Burling:

Q. How do you translate those words? A. It is hard to translate.

Q. Well, what does the first word mean? What is "laufenden"? A. If you are asking me for a legal opinion, I don't know what a lawyer understands by it.

703 Q. What do you understand by it? A. I understand by everything—

Q. What do you understand by the word "laufenden" please? A. "Laufenden" normally means something repeatedly given.

Q. And what does "zuwendungen" mean? A. "Zuwendungen" means—it is a very wide word, you see, in a very wide sense. It means everything given to a person.

Q. Does it mean anything more than a gift? A. It includes, as I see the word, it includes everything for which the other person hasn't to return anything. In my opinion, it includes gifts too, certainly.

Q. And will you agree that "laufenden", in this context, means "current"? A. It means repeatedly.

Q. I see. Your father didn't repeatedly, your parents didn't repeatedly give your sister a million marks, did they? A. No, sir. They couldn't even give her any current expenses, because she was living in Switzerland. So what you imply cannot be a fact, on account of the currency regulations. The will was made in 1938, and she was living in Switzerland.

Q. Do you have any knowledge as to why your
704 father referred specifically of 500,000 marks, and did not refer to a gift of a million marks which you say he made? A. He referred to it—not specifically.

Q. In the phrase "repeatedly give gifts"? A. He specifically says "and future donations", or however you translate "zuwendungen". So there was a provision even included for future acts.

Q. I thought you agreed that "laufenden" could be translated "current". A. There is a sentence following it, and you must read both sentences together.

Q. The following sentence reads as follows:

"The gift of nominal or six million shares of the Adam Opel A.G."— A. No; that is not the sentence I mean, Mr. Burling.

Q. Then will you read it to the Court, the sentence you had in mind? A. May I see the German?

Q. That is the German (handing). A. It says here: "Which our daughter will receive or is going to receive."

You see, the word "noch" implies a future act.

Q. This will is made in 1938, isn't it? A. Yes.
705 Q. So a gift made in 1933 would not be a future gift, would it? A. Certainly not, no.

Q. And the gift which you say was made of a million

marks in 1933 is not referred to in the will, is it? A. No, it is not referred to, only in a general way. Everything she received before or, say, after should be accounted for.

Q. Is it not the fact that, assuming you were given the 600 shares of Opel as you stated, you were the only grandchild of Adam Opel that took a large part of the Adam Opel wealth by a gift from a parent while the parent was alive? A. Two cousins of mine had gotten even bigger amounts by inheritance.

Q. Will you please answer my questions, Mr. von Opel? You can understand that question. A. You mean by way of gift?

Q. You heard the question, did you not? A. You asked me, if I understood correctly—

Will you read it again to me?

The Reporter (reading): "Question: Is it not the fact that, assuming you were given the 600 shares of Opel as you stated, you were the only grandchild of Adam Opel that took a large part of the Adam Opel wealth by a gift from a parent while the parent was alive?"

706 The Witness: Yes, that is correct.

By Mr. Burling:

Q. Thank you. Now, did I understand you correctly to testify that in the conversations of October, 1931, your father said to you that this gift of 600 shares of Opel would put you ahead of your sister? A. Definitely so, yes.

Q. And did he say that what he wanted you to do was to take the capital, which would yield an income of, say, a million marks a year, and keep for yourself the equivalent of what your salary from Adam Opel had been, and to accumulate the rest on behalf of your sister? A. That is not a good expression—"accumulate on behalf of my sister." She never was to receive accumulated amounts. There was just an accounting procedure.

Q. You were not to take more than 20 per cent? Is that correct? A. Approximately, yes.

Q. And the remaining 80 per cent was to be piled up? Isn't that so? A. "Piled up" isn't the proper expression, Mr. Burling.

Q. Fine. Well, what was to be done with the remaining 80 per cent? A. It was to be accounted for.

707 Q. What was to be done with it, sir? A. It was to be accounted for, as stipulated in the gift contract.

Q. Will you tell me what was to be done with the remaining 80 per cent? You were to get 20 per cent. What happened to the rest of it? A. I don't understand your question.

Q. Assume that a million marks is earned in the year 1932, from the investments which are the proceeds of the 600 Opel shares. A. Yes.

Q. Under your father's expressed intention, you were to take 20 per cent, or 200,000 marks for yourself? A. It was understood this way in the beginning, yes.

Q. Thank you. What did your father say to you was to be done with the remaining 800,000 marks? A. I had to account for it with my sister.

Q. Well, will you explain what you mean? A. I am not a lawyer. It is clearly explained through the "ausgleichung".

Q. Where would the money be placed? A. The gift contract does not say anything about where the money has to be kept. It is just as I tried to explain to you, an accounting procedure.

Q. All businesses are carried on with accounting

708 procedures, Mr. von Opel; but an accountant can say where the money is. What was to happen to the money? Would it just disappear? A. I was entirely free to dispose of it as I wanted. Only in the case of the death of my parents, I had to account for this amount.

Q. I see. What did your father tell you he wanted you

to do with the 80 per cent, until the death of both of your parents? A. Nothing.

Q. Well, then you were to accumulate it, if you were to do nothing with it? Isn't that so? A. Will you just read the gift contract; everything is clearly stated in there. There is no instruction in the gift contract obliging me to keep any amounts in this way or the other, not a word of that.

Q. I have read that instrument myself, Mr. von Opel. I want to know now what your testimony is as to what you and your father talked about in Wiesbaden and Ruesselsheim, in October, 1931, with reference to the 80 per cent of the income. A. He told me he wanted his both children to be on the same basis; and if he would make quite a considerable gift to me, that I should account for it with my sister. He didn't want her to be put at a dis-
709 advantage. And for this reason there are many paragraphs in regard to undrawn earnings, as it is translated here, which were stipulated into the contract. And Dr. Hachenburg paid specific attention to this paragraph.

Q. Yes, Mr. von Opel. But I still want to know about the 80 per cent. Isn't it the fact that you were to take 20 per cent for yourself, for your living, and that you were to employ the other 80 per cent of the income in some manner? A. There is nothing stipulated in the gift contract.

Q. I have read that many times. I am asking you about your discussions with your father. A. I just repeated to you what he said, namely, he said he wanted both children to be on exactly the same basis.

Q. What did he say to you, Mr. von Opel, again assuming you have a million marks, which is what you testified yesterday, I think, did you not, he said, "You will have an income of about a million marks from this gift"? A. Yes, he figured it out and compared it with my former income at the Opel Corporation.

Q. And he said, "If you keep 20 per cent of the income

from this gift, you will have about the same income as you had before."

Can't you tell us at all what he said he wanted you to do with the remainder, except to account for it? A. I can only repeat what is stipulated in the gift con-
710 tract. You must read the gift contract. I am not a lawyer.

Q. I wasn't present in Ruesselsheim, either. I am trying to find out what your father said. I do not know where the 80 per cent was to go.

In the year 1932, assuming your father and mother did not die, were you to deposit the 80 per cent in the bank, were you to invest it, or were you to buy a yacht with it? A. No; nothing was said about it in the gift agreement. I could freely do with it what I wished. But at the end after my father's death, I had to account for it to my sister.

Q. But you testified yesterday you were to take 20 per cent for yourself. A. Yes.

Q. And that leaves the remaining 80 per cent just floating with no instructions from your father as to what to do with it? Is that correct? A. Yes, correct.

Q. Have you ever before stated the contention that the split, 80-20, you have just testified about, was because of your father's interest in your sister?

Have you ever indicated that before yesterday to any official of any Government or in any court proceeding in any country? A. Everybody who reads this gift
711 contract and sees that the biggest part of it refers to this matter of accounting, must naturally see it.

Q. There is nothing in Plaintiff's Exhibit 5, that is, the gift agreement, that says that the reservation that you are to take only 20 per cent of the income is for the purpose of equalizing the treatment of you and your sister, is there? A. It is expressly stated that the undrawn amounts meaning this 80 per cent, are to be added to the capital for accounting purposes. It is clearly stated in the gift contract.

Q. Now, coming to another topic:

You said yesterday, did you not, when you arrived in New York in October, 1931, you went at once to the National City Bank and inquired as to who was the officer who had charge of the escrow agreement with General Motors? A. Yes, I did.

Mr. Gallagher: I don't believe he stated that, Mr. Burling. I believe he said in charge at National City Bank of the escrow agreement.

Mr. Burling: I don't understand the objection.

Mr. Gallagher: I believe you misstated his testimony of yesterday. I am merely trying to correct it. I believe the witness stated yesterday, when he arrived in New York he wanted to find who the escrow agent was at the bank, and not who was in charge at General Motors.

712 By Mr. Burling:

Q. All right, I will take your counsel's question, Mr. von Opel. Didn't you say you wanted to find out who the official of the bank was who was in charge of the escrow agreement? A. That is correct. I didn't know the name of the official.

Q. And then you found the name of the official? A. Yes, I did.

Q. And then you went to see him? A. Yes.

Q. And you told him about this deed of gift, did you? A. Yes, sir.

Q. And that was Mr. Pratt? A. Yes.

Q. And the escrow agreement was with the National City Bank? Is that right? A. Yes.

Q. Don't you know as a fact that Mr. Pratt was not even an official of the National City Bank? A. I didn't get this question.

Q. Did you not know it to be a fact that Mr. Pratt was not an official of the National City Bank? A. That is per

fectly new to me. I hope you don't mix him up with Mr. Pratt of General Motors. There is another Mr.
713 Pratt in General Motors. But I think he is no relative of Mr. Pratt of the National City Bank.

The gentleman I have in mind is vice president Pratt; I forget his initials.

Q. I show you Defendant's Exhibit 33 and ask you if that refreshes your recollection.

Mr. Gallagher: What is that exhibit?

Mr. Burling: A letter from Mr. Sammis, vice president of the City Bank Farmers Trust Company.

Mr. Gallagher: And dated when?

By Mr. Burling:

Q. Mr. von Opel, I wish to state to you that this is a letter from Mr. Sammis, the vice president of the City Bank Farmers Trust Company. A. Yes.

Q. To John Thomas Smith, vice president of General Motors Corporation. A. Yes.

Q. The genuiness of which is admitted by the plaintiff. A. The Sammis was City Bank Farmers Trust.

Q. That is correct. And he is admitted to be vice president of City Bank Farmers Trust Company. A. Yes; they have many vice presidents.

Q. I call your attention to the words "Referring to
714 your inquiry of our Mr. Pratt"—

Does that refresh your recollection as to who Mr. Pratt was? A. Yes, that is the name which I mentioned.

Q. This is a letter by the City Bank Farmers Trust Company relating to "our Mr. Pratt". A. Yes.

Q. And that does not refresh your recollection that Mr. Pratt was not an official of the National City Bank? A. It refreshes my recollection that he was, because it refers to him as "our Mr. Pratt".

Q. An official of a different bank refers to him as "our

Mr. Pratt", and that refreshes your recollection he was an official of the National City Bank? A. The National City Bank and City Bank Farmers Trust is one corporation, merged now at this time, I think not merged but certainly under joint management.

Q. They have completely separate staffs of officers, do they not? A. I don't know the relation between the two banks. I only know they are cooperating closely together. And I think it is not unusual that a vice president of the City Bank Farmers Trust refers to a vice president of the other bank as "our Mr. Pratt."

Mr. Burling: I offer Defendant's Exhibit 33 in
715 evidence, Your Honor.

Mr. Gallagher: No objection.

The Court: Very well.

(The document referred to was marked and received in evidence as Defendant's Exhibit No. 33.)

By Mr. Burling:

Q. Of what country do you purport to be a citizen, Mr. von Opel? A. I am a citizen of Liechtenstein.

Mr. Gallagher: That has been stipulated, Mr. Burling.

Mr. Burling: I am going on to something else.

Mr. Gallagher: Then the word "purport" should be stricken. It is stipulated he is a citizen of Liechtenstein.

By Mr. Burling:

Q. Did you acquire such citizenship by naturalization? A. Yes, I did.

Q. At the time you were naturalized, did you take an oath of allegiance? A. No; that is not required by law.

Q. You took no oath of allegiance? A. No; it is not

required by Liechtensteinean law. It can be taken any time after naturalization and has nothing to do with the naturalization proceeding as such.

For instance, you will find in the laws that all
716 women don't need to take an oath at all to become a citizen. It is only taken for those who, I think people of military age, and in such cases.

Q. Did you ever take an oath of allegiance to Liechtenstein? A. No; I did not.

Q. Do you regard Liechtenstein as your adopted country? A. Yes, I did.

Q. Do you now? A. Please?

Q. Do you now regard Liechtenstein as your adopted country? A. Certainly.

Q. Do you feel allegiance toward Liechtenstein? A. I do.

Q. What kind of a government has it? A. It is a principality.

Q. At the time you were naturalized, what was the name of the reigning prince? A. It was Prince Constantine.

Mr. Burling: Will you stipulate that the correct name is Franz Josef, II?

Mr. Gallagher: I haven't any idea who it may be.

Mr. Burling: I state I can prove it is a matter of
717 judicial notice. I can bring in the textbooks.

Mr. Gallagher: Well, you prove it. I cannot see the relevancy of this, Your Honor, in view of the fact that he is a citizen of Liechtenstein.

The Court: I think that there may be some relevancy.

By Mr. Burling:

Q. When did the reigning prince at the time you were naturalized ascend the throne? A. I think the former prince resigned. It was his uncle.

Q. That isn't responsive to my question, Mr. von Opel.

At the time you were naturalized, somebody was Prince of Liechtenstein. A. Yes.

Q. What is your best judgment as to when that man ascended the throne? A. Prince Leopold, you mean?

Q. Whoever the prince was. A. If I recollect it correctly, it must have been, I think the old prince resigned in the thirties, I think the middle thirties, if I am not mistaken.

Q. Do you regard your allegiance to Liechtenstein such as it would include a duty to fight in defense of your country? A. I am not a militarist, and I am not used to
718 speak in such terms. If I would have to fight, in Switzerland or Liechtenstein, which I regard as one unit, I certainly would fight for them.

Q. Well, you are not a citizen of Switzerland, are you? A. But Liechtenstein and Switzerland are very closely related. In fact we are represented by the Swiss Foreign Office. And as I could not yet become a Swiss citizen, I decided to become a Liechtensteinean citizen, which is the closest I could come to it.

Q. What does the flag of Liechtenstein look like? A. It is blue and red.

Q. Do you know whether during World War II your country was invaded? A. During World War II?

Q. Do you know as a fact, was it or was it not invaded? A. Well, Liechtenstein wasn't invaded, no. It is part of Switzerland; and they have a military union with Switzerland. The Swiss would have fought for Liechtenstein.

Q. Whether or not war was declared or not, did soldiers, not Liechtensteinean or Swiss, enter Liechtenstein?

Mr. Gallagher: Will you state the time, Mr. Burling?

Mr. Burling: During World War II.

Mr. Gallagher: During World War II—does that mean 1942 or 1939? Will you state the time?

Mr. Burling: No, I won't. I think, if this man

719 doesn't know whether his country was invaded—

Mr. Gallagher: He was interned from 1941 on.

The Court: We will let him answer.

The Witness: I am not aware of the fact that Liechtenstein was ever invaded.

By Mr. Burling:

Q. Isn't it the fact that in 1945, Russian soldiers who had deserted to the German Army entered Liechtenstein in great numbers, ahead of the— A. Romanian soldiers entered Liechtenstein as well as Switzerland, as deserters, and were interned, and perhaps French soldiers and maybe Russian soldiers. At the time I was not present there. But there certainly was no invasion of Liechtenstein. It would have been an invasion of Switzerland, and everybody would know about it.

Q. As a result of the inrush of Russian soldiers in Liechtenstein, don't you know the towns of Liechtenstein were abandoned—

Mr. Gallagher: If your Honor please, all this witness could possibly know about this situation could be by reading it in the newspapers or elsewhere. He was in the States since 1940, and was in internment at the time Mr. Burling is talking about.

The Court: He is trying to show what knowledge he kept of conditions in this country. I will permit it.

720 By Mr. Burling:

Q. Is Liechtenstein an absolute monarchy, or is some other sort of government? A. It is, as I say, a constitutional monarchy.

Q. Can you tell me within 25 years when the constitution was adopted? A. Before the First World War, Liech-

tenstein had a loose relation to the Austrian-Hungarian Empire. And after the First World War, they came over to the Swiss side, and I think that about this time certain changes of the constitution took place.

Q. Does it have a legislature? A. Yes, there is a legislature.

Q. What kind? A. An elected legislature.

Q. Of how many houses? A. One house.

Q. How long has Liechtenstein been an independent sovereign principality, approximately? A. That goes back, I think, since its separation from the Austrian-Hungarian Empire. They were part of it and then split under those rulers. I think it was in the beginning of the Nineteenth Century, if I am not mistaken.

Q. In the Napoleonic era? A. That is possible.

721 Mr. Burling: I advise counsel, and if they refuse to stipulate, I will prove the correct answer to that is 1866.

By Mr. Burling:

Q. What is the approximate population of your country? A. Ten thousand inhabitants.

Q. What is the approximate population of the capital of your country? A. I should say Vaduz is, I would say, about—well, you would not even call it a city. It is more or less of a town, a little town—I think about 2,000 or 2,500 inhabitants.

Q. When did you last set foot in Liechtenstein? A. I think I was there last in 1938.

Q. How did you happen to be there? A. I passed through Liechtenstein.

Q. In an automobile, or in a train? A. In an automobile.

Q. And how long did it take you to drive through Liechtenstein? A. It is a very small country. If you really

drive fast, you can go through there in, it depends upon which side to which you go.

Q. Well, Liechtenstein, the main road between Austria and Switzerland runs through Liechtenstein, doesn't
722 it? A. Yes, and also the railway.

Q. And if you were going from Austria to Switzerland, you could drive through in less than half an hour, couldn't you? A. Yes, you could do that.

Q. And have you ever been in Liechtenstein except while passing through it? A. No.

Q. And you were not in Liechtenstein at the time you were naturalized, were you? A. No. I could not go, because at the time I was rather sick and could not go personally.

Q. Are you familiar with the Liechtensteinean naturalization law? A. I only know what my lawyers told me about it.

Q. Were you not told that in order to become naturalized in Liechtenstein, it is necessary first to acquire membership in a community in Liechtenstein? A. Yes, definitely. That is the same all over Switzerland and Liechtenstein.

Q. Thank you. And what community did you become a member of? A. The community of Planken.

Q. Is it not true that the law provides that except under special circumstances, an applicant for naturaliza-
723 tion must be a resident of the community for three years prior to naturalization? A. That is not correct. The naturalization law says that in special cases exemption from this ruling can be made.

Q. That is what I said. The law provides that except under special circumstances one must be a member of the community for three years, doesn't it? A. I don't know. I think it says a resident of the community.

Q. All right. Have you ever been in Planken? A. Yes.

Q. When? A. I drove through there. I drove through Liechtenstein quite frequently.

Q. And did you drive through Planken also? A. I think, yes. It is more or less a little village. It is right on a plateau overlooking the Rhine Valley.

Q. Now, what are the exceptions to the rule that you must reside in the community for three years prior to naturalization?

Mr. Gallagher: Your Honor, I would like to renew my objection again to the length of this cross examination on this particular subject, in view of the fact that the Government has heretofore stipulated that this man is a citizen of Liechtenstein.

724 Mr. Burling: If Your Honor please, our position is that as a matter of international law Liechtenstein is an independent sovereign power, and we cannot look behind its rules. And if my pet poodle were to be given citizenship by Liechtenstein, there would be nothing we could do except accept it.

Mr. Gallagher: Absolutely, and that is the right of the sovereign of any nation, and you know that, Mr. Burling.

Mr. Burling: And that is all we have conceded, that Liechtenstein has done this; and I shall come to the motives of that principality in a moment.

The Court: I had the impression that the point was to be made that under certain conditions the German citizenship would not be given up.

Mr. Burling: That is correct, Your Honor. That is what this is offered for.

The Court: And I understand you are trying to establish the conditions which would indicate he hadn't really forsaken his German citizenship.

Mr. Burling: That is exactly what I am trying to establish.

The Court: I will take it, and we can hear you on it at the end of the case.

By Mr. Burling:

Q. Do you know what the exceptions to the three-year residence rule are? A. No, I couldn't tell you that.

725 Q. Did you pay anything to the community of Planken? A. Yes.

Q. How much did you pay to the community of Planken? A. The community assessed me, I think, it was the sum of around thirty or thirty-five thousand francs.

Q. That is about seven thousand dollars? A. Yes.

Q. And did you pay anything to the Principality of Liechtenstein, also? A. Yes. The law provides that 50 per cent of the amount paid to the community has to be paid to the Principality.

Q. So how much did you pay in all to Liechtenstein? A. I paid to the Principality thirty-five thousand and seventeen thousand five hundred—or thirty-five thousand to the community and seventeen thousand five hundred accordingly to the Principality. And sent out several registration fees and so on and so forth. I don't remember those figures.

Q. Will you agree with me that the total budget of the Principality of Liechtenstein the year you were naturalized was about two million Swiss francs? A. About, yes, it is a very low budget.

726 Q. So that what you paid to Liechtenstein in the year you were naturalized is equal to about 3 per cent of the entire gross budget of the Principality? Isn't that right? A. No, that is not correct. Because the community keeps what she gets. Because a community, under Swiss law, has to take care not only of its members but also of the dependents of the members. It is quite a heavy obligation, which a community under Swiss and Liechtensteinean law undertake.

Q. But, at any rate, the sum of money you paid into Liechtenstein, either to the Principality or the community, was equal to about 3 per cent of the budget of the

Principality of Liechtenstein? A. That is not correct, Mr. Burling. You cannot take any sum and refer to a budget of another unit.

As I told you, what you pay to the community, stays in the community, and then in turn guarantee your livelihood in time of distress.

Q. You have made that point, but what I have asked you seems to me to be a simple question—

The sum of money which you paid, either to the Principality of Liechtenstein or to the community, added together, is equal to a sum which is 3 per cent of the total budget of the Principality? A. Mathematically taken, yes.

Q. Thank you; that is what I asked you.

727 Do you know the approximate population of the community which you bought into? A. I think they have about, I would say, offhand, four or five hundred members.

Q. Would you agree with me if I told you that the books of reference state that it is 100? A. No; I think it is more than 100. It is a very small place.

Q. Now, in addition to the sums of money you paid outright to the community and to the Principality, you lent thirty-five thousand Swiss francs to the Prince of Liechtenstein, did you not? A. That is not correct, either, Mr. Burling. That is another provision of the law—

Q. Do you say it is not correct? A. Yes.

Q. Thank you. Then I ask you, didn't you previously testify you did lend the Prince of Liechtenstein thirty-five thousand Swiss francs? A. That must be a mistake. I investigated into the matter, and I regret these mistakes. And I found out differently. I think there was an amount of 30,000 Swiss francs—

Q. Will you try to answer my question, please?

Mr. Gallagher: Let him finish, Mr. Burling, please.

Mr. Burling: I am repeatedly trying to get the
728 witness to answer a question and not make a general speech. I am not required to let the witness finish, if he goes on beyond the question.

By Mr. Burling:

Q. The question was, did you previously testify you lent the Prince of Liechtenstein 35,000 Swiss francs? A. That is possible. I don't remember, though.

Q. I will ask you if you gave the following testimony in April, 1942, to the Miami alien enemy hearing—

I am reading from pages 60 and 61 of the transcript:

"Mr. von Opel (going on): And on top of that, they expect the Liechtensteinean citizen to acquire some Government bonds; and so I acquired about $10,000 worth in interest bearing but non-transferable Government of Liechtenstein Government bonds.

"So the whole transaction, including these bonds, which I still own, I think the whole thing was about, let me see, about $20,000.

"How many francs would that be?

"Answer: About 90,000 francs.

"Question: Did those bonds represent a loan to the Prince of Liechtenstein?

"Answer: Yes, the bonds, they are worth about, I should say, thirty or thirty-five thousand francs.

"Question: Is it really a loan directly to the
729 Prince?

"Answer: A 3 per cent loan, interest bearing bonds."

The Witness: You said is it a completely correct statement. I stated it was given to the Government of Liechtenstein. I never paid anything to the Prince.

By Mr. Burling:

Q. Weren't you asked, "Is it really a loan directly to the Prince?"

And didn't you say—"A 3 per cent loan"? A. It means the Principality, I mean, not to the Prince personally. I never gave a loan to the Prince personally. It is clearly stated it was given to the government of Liechtenstein.

Q. And were you questioned during the Miami hearing about the political ties of Liechtenstein? A. I don't remember it.

Q. Do you remember saying this—and I am reading from page 58:

"About five years ago there was a vote going on, and they had, I think, one or two Nazi members in the Liechtensteinean Parliament, and they were outvoted, I two votes against fifty or sixty." A. Yes; that is what I was told.

Q. Don't you know that the total membership of
730 the Liechtensteinean Parliament is 15? A. That is possible. I only wanted to express—I think there are more than 15, Mr. Burling—

I only wanted to say, I was asked whether Liechtenstein was, or had connections with some Nazi Party, or any connections with Germany. And I said, "No; in fact, they are anti-Nazi, and there is but a small fraction of the population sympathizing with them."

Q. Who handled your naturalization in Liechtenstein? A. I did not get it.

Q. What attorney handled your naturalization in Liechtenstein? A. Dr. Marxer. It was handled between Dr. Henggeler—

Q. Will you examine a full page advertisement in a brochure on Liechtenstein and examine an advertisement from one L. Marxer, lawyer, and state whether or not that is the man who did it? A. Yes, I think that is a Mr. Marxer. He was a former government official and he is regarded as one of the outstanding lawyers in Liechtenstein.

Mr. Burling: Your Honor, I don't wish to clutter the record, but I will ask leave to hand this book to Your Honor.

Mr. Ingoldsby: May we see it first?

(The book having been handed to counsel for plaintiff:)

Mr. Gallagher: Do you have a translation of this?

731 Mr. Burling: No. You don't need one.

Mr. Gallagher: Do you want to put the last sheet in?

Mr. Burling: I wish to show His Honor the last sheet.

(The matter referred to was handed up.)

By Mr. Burling:

Q. Will you examine Section 14 of the Liechtensteinean citizenship law for a moment? A. Yes.

Q. Will you see if I translate correctly—

"The Government or an agency authorized by it shall accept the oath after citizenship has been granted.

"The oath of citizenship shall be"—

A. I can't translate it so fast.

Q. I see. A. You see clearly expressed here, Mr. Burling, that the oath has nothing to do with the naturalization.

Q. Will you translate it? A. It is only an additional device which can be taken or cannot be taken. It is entirely up to the government what they do, and it clearly states that all females are exempt from it.

Q. Doesn't it provide that males of age are not exempt from it? A. I cannot tell you in detail what their

732 customs and rules are.

Q. What is your real name, in full? A. Fritz von Opel.

Q. Isn't it Baron Fritz von Opel? A. No, sir.

Q. Have you ever held yourself out to be a Baron? A. No, sir; I protested it wherever I could.

Q. Isn't it the fact that you repeatedly were addressed as Baron, by business associates? A. No. Many people, for instance, if you will read Miami or Palm Beach newspapers, you will see they always make over any Europeans; they make a "count" or "Baron" out of it. It is a kind of nobility, and if people want to be polite they can even address you as Baron, and it isn't very wrong because it is the lowest rank of nobility.

Q. I show you Defendant's Exhibit 34-A and ask you if it refreshes your recollection as to whether business associates addressed you as "Baron". It begins, in English, "My Dear Baron", doesn't it? A. Yes, it does.

Q. And did you receive that letter? A. I can't remember it, but it is perfectly possible.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

733 (The document referred to was marked and received in evidence as Defendant's Exhibit 34-A.)

The Witness: As I told you, it is a polite way of addressing people of nobility.

By Mr. Burling:

Q. I show you Defendant's Exhibit 35-A and ask you if that refreshes your recollection as to whether you were ever addressed as "Baron" by business associates? A. Yes, that is again a letter of Dr. Henggeler. If you compare those letters, written before 1936, or I would say 1935, you will see it was given up by Dr. Henggeler, on my wish.

Q. But at any rate Dr. Henggeler in 1934 corresponded with you as "My Dear Baron"? A. Yes, until I protested to him and said he should leave this monkey business out.

Mr. Ingoldsby: Are these offered only as proof of the fact that he was addressed as "Baron"?

Mr. Burling: That is right. These documents are offered only for the salutation. In each case it is "My Dear Baron".

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit 35-A.)

The Witness: At the enemy alien hearings in Miami, I formally protested the misuse of this word "Baron."

734 Br. Mr. Burling:

Q. Isn't it true you quite commonly told people you were "Baron" until the year 1940 or 1941, until which time or at which time your attorney, Mr. Isadore Kressel, said to you, in words or in substance. "This Baron stuff doesn't go over very well in America, and I advise you to drop it"? A. I do not remember it, Mr. Burling. That is fantastic, because I never used this title, and my name, which was quite famous in sports world, was always good enough for me—Fritz von Opel, manufacturer of households goods.

Q. Did you ever tell anyone Mr. Isadore Kressel or any other lawyer had ever told you to abandon the use of the title "Baron"?

Mr. Gallagher: We object, Your Honor, to that line of questioning.

On what basis are you asking that, Mr. Burling?

Mr. Burling: It will be shown in the next question.

Mr. Gallagher: I want you to particularize it before we answer it.

The Court: What is the question?

The Reporter (reading): "Question: Did you ever tell anyone Mr. Isadore Kressel or any other lawyer had ever told you to abandon the use of the title Baron?"

The Witness: I never used this title; so there was no reason for anybody to advise me differently.

735 By Mr. Burling:

Q. So that the answer to my question is no? Is that correct? A. I am not aware I ever used this title on my own.

Q. Are you unable to answer my question? A. Would you please repeat it?

Q. Did you ever tell anyone that your lawyer, or in particular Mr. Isadore Kressel, had advised you to abandon the use of the title "Baron"? A. That seems hardly possible, Mr. Burling.

Q. Did you ever tell Mr. J. Mason Haughland? A. I never used this title.

Q. Did you ever tell Mr. J. Mason Haughland that Isadore Kressel or some other lawyer had advised you to drop the use of the title "Baron"? A. It is fully impossible, because I never used this title. So there never was any reason for me to tell anybody that anybody else advised me about it.

Q. Whether or not there was a reason, did you tell Mr. Haughland that? A. Never.

Q. Thank you. Have you ever bribed any official in any country? A. I am not aware of this fact, Mr. Burling.

Mr. Gallagher: We will have to ask Mr. Burling to
736 particularize on that question, again, Your Honor.

Mr. Burling: I have a right, I submit, Your Honor, to ask a general question and then come to the particular question.

The Court: I think a bribery of any person would be too remote. I sustain the objection to that.

Mr. Burling: Your Honor, I offer it on two grounds: One, the witness has previously testified inconsistently

concerning bribery, and his inconsistent testimony goes to his credibility.

The Court: Well, I am not going to try a bribery case here—not unless you bring it in with something connected with this case. I will have to sustain the objection, on the ground it is general.

Mr. Burling: But, if Your Honor please, the principal purpose of this is to show a series of inconsistent statements concerning bribery, made under oath, which goes directly to credibility, I submit.

The Court: You will have to give me authorities on that.

Mr. Burling: If I can show that the witness has testified under oath, or testified to Government interrogators with two diametrically opposite stories concerning a particular incident involving bribery, then one of those must be false.

The Court: Well, it would not be proper cross examination anyway. If you prove that independently, I
737. will consider it.

Mr. Burling: The independent proof would be to ask him if he did not testify concerning certain matters.

The Court: I don't follow you at all. You say you want to prove by some other witness that he testified?

Mr. Burling: No, Your Honor. I have statements from this witness which it is impossible to reconcile; so that one of them or the other of them must be false. And I say that goes to the general credibility of the witness.

The Court: You mean with respect to bribery?

Mr. Burling: No, with regard to any issue. If this man testified one way at one time, and another way at another time—

The Court: With regard to this case?

Mr. Burling: The bribery relates to the proceedings which are the subject of the stipulation this morning, Your Honor.

The Court: The proceedings where?

Mr. Burling: The German proceedings, the subject of the argument before Your Honor at the close of yesterday's session, and the subject of the stipulation which Mr. Gallagher read this morning, that there was a proceeding in Germany as a result of which a fine of three and a half million reichsmarks was imposed on this witness' father.

The Court: And you want to bring that out in this
738 proceeding, that this man was guilty of bribery? Is that it?

Mr. Burling: No, Your Honor. I want to bring out that this man subsequently has told diametrically opposite stories concerning bribery in those proceedings, for the purpose, and for the sole purpose, of showing that he has testified in inconsistent patterns, so that some of his testimony must have been false. And I say that any showing of false testimony goes to his credibility.

Mr. Ingoldsby: May I be heard on that, Your Honor?

The Court: Yes.

Mr. Ingoldsby: Your Honor, if the credibility of the witness—or let me put it this way:

If Mr. Burling is attempting to show the lack of credibility of the witness, because of the offensive bribery, then of course there are very definite rules governing how that shall be shown. But I don't think he will contend for one moment there was ever any conviction, or that there was evidence of any bribery.

All he wants to examine concerning at this time, apparently from what he says, is two inconsistent statements.

If I might make my point clear, because I think it will undoubtedly arise in connection with further cross examination of this witness, I would like to state that Mr.
von Opel is about 49 years of age. You can see from
739 the testimony so far how involved his activities have been, in taxes, in gifts, in business, and in a thousand and one things.

And I very definitely submit to Your Honor that it is

inconsistent to take every return which has ever been filed and try and show that one is inconsistent with the other, for example.

The Court: That doesn't go to the admissibility of it, the age of a transaction. I am perfectly willing to have you gentlemen present authorities on it, if it is that important. I don't recall that we have stopped the trial of a case to prove inconsistent statements in regard to disconnected matters. That is my recollection. If you have authorities on it, and it is important, I will be glad to hear you.

Mr. Burling: These matters are not disconnected, if Your Honor please.

The Court: That is what I want to find out. You started out to ask him, and the question was objected to, if he ever made a statement admitting bribing anybody; and I sustained the objection to that question as too general and too remote. If you will let me know, at the conclusion of this recess, the questions you want to ask, and show the connection, and present to me the authorities I lack to let you go on to prove prior inconsistent statements in regard to other matters in order to impeach his credibility, I will be glad to hear you on that.

I have to go to a meeting of the Court in General Term; but I think I will be back at 2 o'clock, or, if not, perhaps five minutes later. But you can make it 2 o'clock.

(Accordingly, at 12:25 p.m. the luncheon recess was taken until 2 o'clock.)

AFTERNOON SESSION

Mr. Burling: If Your Honor please, I desire at this time to withdraw the question to which objection was

made, without prejudice to my re-introducing it tomorrow, if we can find authority tonight.

The Court: All right. I have had my law clerk do a little research on it, but I have had such a lengthy session with the Court that I haven't had a chance to look into it myself. So that will be all right.

Mr. Burling: I am not going back in general to this topic, Your Honor. But I find I omitted one question on the subject of Liechtenstein.

The Court: All right.

By Mr. Burling:

Q. Is it not a fact, Mr. von Opel, that in the process of acquiring Liechtensteinean nationality there was a special act of the Liechtensteinean Legislature enacted? A. Yes, sir.

741 Q. What does the address Hohenzollern Strasse 6 in Berland mean to you? A. I don't remember this address.

The Court (to the witness): What did you say?

The Witness: I don't remember the address, Your Honor.

By Mr. Burling:

Q. Do you know whether or not it is a fact that there was a street in Berlin called "Hohenzollern Strasse," the name of which was changed to "Graf Spee Strasse"? A. That is possible.

Q. Have you ever or frequently been at either 6 or 12, at Hohenzollern Strasse or Graf Spee Strasse? A. I don't remember those street names, Mr. Burling.

Q. You do not recall either address? A. No.

Q. And you never had an apartment in a building having one of those addresses? A. I don't remember it. It is perfectly possible that friends of mine lived there, which I visited.

Q. Is it the fact that you maintained, either in your own name or in the name of someone else, an apartment at that address? A. No, sir.

Q. You are certain that that is not the fact? A.

742 No.

Q. What connection, if any, did your father have with the Nazi Party? A. My father, in 1933, upon the advice of—

Mr. Gallagher: Your Honor, we object to this line of questioning. We cannot see the relevancy of it. Membership in the party is not at issue in this matter at all.

The Court: I presume he is trying to show some connection between father and son.

Is that right?

Mr. Burling: Yes, Your Honor.

The Court: Subject to being connected up with the son, I will permit it.

Mr. Burling: And may I respectfully request the Court to ask that I can examine without interference?

Mr. Gallagher: You don't want to deny to us the right of objection, do you, Mr. Burling?

Mr. Burling: If Your Honor please, I have no objection to my friends objecting. I do wish they would communicate without interfering with my train of thought, and pass each other notes or talk in a low tone of voice while I am examining.

By Mr. Burling:

Q. Your father joined the party in July, 1933? Is that right? A. Yes; I was informed about it in 1945 or 1946.

742 Q. I see. Your father was also a contributing member of the SS? Is that right? A. Yes—what you call a dues paying member.

Q. A dues paying member of the SS? A. Yes.

Q. Will you state briefly what the SS was?

Mr. Ingoldsby: If Your Honor please, may I be heard on this matter?

The Court: All right.

Mr. Ingoldsby: The issue in this case, as I understand it, the Government has conceded or stipulated in the pretrial proceedings, that there was only one issue of fact here, and that is whether or not the property which is the subject matter of this suit is owned or controlled or tainted with an enemy interest.

We submit that if it could be developed by the Government that this property was owned, controlled, or subject to an enemy taint, that is, by "enemy" I mean the term "German" in this instance, it makes absolutely no difference whether he is the highest Nazi, or the greatest soldier in the German Army, or the most lowly non-party member; and I submit, therefore, the matter is completely irrelevant and is only meant to becloud the general overall issue.

If Mr. Burling insists it is relevant, I wish he would state the basis of the relevancy at this time.

744 Mr. Burling: The principal ground of relevancy, if Your Honor please, is that my friend this morning so explained all these complex devices for hiding these real assets, by indicating that it was necessary to hide them because the German Government in 1933, '34, '35, and '36 was putting pressure on Wilhelm von Opel.

I seek to show that it is unlikely this man, who was an SS man, a party member, a man who supported Hitler before he came into power, was being coerced; and that the real reason for all this hiding was not to hide the property from the Germans, but to hide it in other ways, including hiding it from us.

Mr. Ingoldsby: I submit, if Your Honor please, on the statement of Mr. Burling there has been no statement of relevancy.

I might also point out at this time, if this is his theory, we deny there was any such relationship as he states between Mr. von Opel and Hitler.

Now, we don't think in this proceeding to determine whether or not the property is in fact owned or substantially controlled by Wilhelm von Opel it is necessary to go into any relationship with Adolph Hitler or the Nazi Party or anything else. The question is, was it German?

The inference Mr. Burling raises by the statement he has just made is simply this, that he intends to
745 prove that Mr. von Opel was on sufficiently good terms with Adolph Hitler so that he could disobey all German laws with complete impunity. I think that that statement would pretty nearly refute itself. It is inconceivable that anybody is on such terms in any country. It is just exactly like pointing out and establishing that somebody was a friend of Harry Truman in this country, and therefore it was inconceivable that the Treasury Department would be bothering him on income tax here. That is about as close a corollary as we can find.

I might also say, Your Honor, on the very question which is now raised, it was covered by the stipulation which was entered in evidence this morning, namely, that the father, Wilhelm von Opel, was fined a total of three million five hundred thousand reichsmarks—and I don't have a copy of the stipulation before me, and without having the reporter read it, my recollection of the stipulation is that it goes further.

Mr. Burling: It does not, if Your Honor please—not one bit further.

Mr. Ingoldsby: All right; let us get the stipulation.

Mr. Gallagher: The stipulation reads as follows:

"It is hereby stipulated between the parties that a fine was imposed upon Wilhelm von Opel in the District Court in Frankfort, Main, on July 14, 1934, in connection with the gift agreement, in the amount of three and a half mil-

746 lion reichsmarks.

"It is further stipulated between the parties that no objection will be made to Fritz von Opel's testifying that he thought further payments would be demanded by the German Government pursuant to the provisions of the gift agreement."

That is the stipulation.

Mr. Burling: That is not a stipulation as to fact. It is a stipulation that I won't object.

The Court: Gentlemen, I think in this case the motives or reasons for these transfers would be important, and I think I ought to give the Government considerable latitude in developing any possible motive which is contrary to that which you suggest. And I should imagine the ownership in the beginning by Mr. von Opel, who made the transfers at a later time, would be important, that is, at the time he made the transfers; and subsequently, probably, it would be important to know what his relations would be over there in Germany which might make him want to make certain changes.

Mr. Ingoldsby: I think that we might agree to that, Your Honor, that that possibly might have been very pertinent there at the time at which the transfers were made, but the transfers were made in either October or November, whether you accept the plaintiff's position or the defendant's position.

747 The Court: I suppose you could not hold him down to too much exactitude as to time. I think it would be open for you to argue that. But there were certain actions taken in regard to this, weren't they, after 1933?

Mr. Ingoldsby: With reference to the gift itself?

The Court: No—with reference to this entire transaction.

Mr. Ingoldsby: If I might state that, Your Honor—

The Court: Aren't there certain waivers they claim, a relinquishment?

Mr. Ingoldsby: In 1935?

The Court: Yes. It seems to me that that whole atmosphere is proper to go into.

Mr. Ingoldsby: May I ask, if Your Honor please—I don't mean to ask a question—but I simply want to point this out to the Court:

I believe Your Honor has a fairly general picture of what took place which resulted in a summary decree in 1934 against Wilhelm von Opel. The statement was made by Mr. Gallagher yesterday, and another statement was made by Mr. Burling. The only difference, really, that occurs in the two statements is that if one were to accept Mr. Gallagher's statement of what happened, there would be no disagreement with what ultimate determination was made. The Government will agree that that was the
748 ultimate determination in the criminal proceedings.

The place where they differ in the conception of what took place in 1933 and 1934 in connection with these proceedings is found in what the underlings, what some of the people who handled the matter as it progresed along the way, thought about it, and by showing what certain individuals and the German Government thought about the case, such as the prosecutor, or an assistant minister.

The Court: I don't think we have gone into that. As I understood the situation, Mr. Burling objected yesterday to any of that court record of proceedings. He said it was irrelevant and not binding upon this Court, and the like.

I was debating as to whether to permit this witness to say he had certain reasons for making a transfer, you see?

Mr. Ingoldsby: Yes, Your Honor.

The Court: When you reached the stipulation on the subject—not that that would be admissible for the purpose of my dealing with that situation in Germany, but admissible for the purpose of your asking him a question on it. And I don't understand Mr. Burling is opening that up now.

I understand what Mr. Burling is trying to develop now

is that the father of this witness had certain motives by reason of his association with the Nazis, which would lead him to go into these transactions, or acquiesce in them, or have these dealings—not only here, but, as I
749 understand, they went down as far as 1935.

Mr. Burling: You mean as far as 1941, if Your Honor please?

The Court: I mean on down.

I don't think I have to admit it. I think you can argue it a little later on, as to what its significance is. It is a little difficult for me, in these ramifications, to consider the admissibility of all this testimony. I will hear you at the end of the case.

Mr. Ingoldsby: I was merely considering the possibility, Your Honor, if this is gone into, possibly the entire criminal proceedings might have to be gone into.

The Court: Well, that may be. I am not going to rule on that yet.

Mr. Ingoldsby: All right, sir.

By Mr. Burling:

Q. I believe the pending question is, will you state what the SS was? A. I am not informed about the Nazi Party organizations, Mr. Burling.

Q. You don't know what the letters SS stand for? A. I know as much about it as everybody who reads newspapers.

Q. Well, can you state what about it you do know? A. There was the SR, and there was the SS.

750 Q. What do you know about the SS? A. I can tell you very little about it.

Q. Well, will you tell us what you can about it, then, please? A. I think it was quite a limited membership in number. I think a much bigger organization was the SA.

Q. What was the nature of the organization? A. I couldn't tell you, Mr. Burling.

Q. You have no idea what the organization was organized for? A. They had so many organizations, and different names; it was of no interest to me, Mr. Burling.

Q. You were in Berlin every year between 1933 and 1939, were you not? A. But I wasn't—

Q. Were you or were you not, sir? A. Yes.

Q. Thank you. A. Yes, I was in Berlin—

Q. Every year? A. Frequently, yes.

Q. You were in Berlin frequently? A. Yes.

Q. And you mean to say you don't have any idea what the SS was organized for? A. I have a general

751 idea.

Q. Will you state what the general idea was? A. It was a party organization of the Nazi Party.

Q. What kind of an organization? A. I couldn't tell you that.

Q. Will you agree with me that it was the Nazi Party Elite Guard? A. I think they were called "Storm Troopers" wasn't it?

Q. What does "Sturm-Abteilung" mean? That means "Storm Troop" doesn't it? A. No; I think SS means—I don't even know what application it has.

Q. You don't know what the word "Sturm-Abteilung" means in English? A. I don't understand your question. Do you want it translated?

Q. Yes, please. What does the word "Sturm" mean, first? A. "Storm."

Q. And what does the word "Abteilung" mean? A. It means "Division", "Echelon".

Q. "Troop"? A. "Troop".

Q. So "Sturm-Abteilung", in German, is "Storm

752 Troops"? A. Yes.

Q. And those were the SA men, the brown shirts? A. I guess so, yes.

Q. And you know very well the SS men wear the black

shirts? A. They had black uniforms; I know that, certainly.

Q. And they were the Nazi elite, weren't they? A. I don't know how they were regarded among the Nazis.

Q. You never heard about that? A. I heard about SS, certainly.

Q. And your father contributed a monthly contribution of a hundred marks to this organization, did he not? A. I don't know from my own knowledge, Mr. Burling, because I heard the whole not before the end of the war. And I was quite embarrassed about it, to tell you the truth. And for one year I didn't even correspond with my father.

Q. You learned also, did you not, that your father had been appointed to the National Academy of Law? A. Yes.

Q. And you learned, did you not, that those appointments were made by Hitler? A. He made all appointments inside of Germany.

Q. And you knew, did you not, that your father had his picture published in company with that of Adolph Hitler?

A. He had published in company with the Kaiser,
753 with Marshall Hindenburg, with the Archduke—

Q. Just a moment, please, Mr. von Opel. I have repeatedly asked you to answer my question. If you want to talk about the Kaiser, or Hindenburg, you can testify to that through your own counsel. My question to you is a simple one:

Don't you know your father had his photograph published in the papers with Hitler in the same picture? A. You said "had his photograph published in a paper". That implies that he himself had it published which is not a fact, I am sure of that.

Q. Very good. Was his picture published in a paper standing with Hitler? A. That is possible, certainly.

Q. Is it true? A. I couldn't tell you. I haven't seen the picture, but it is possible, because at every automobile exhibition in Berlin, every leader of the Berlin Government.

whoever it was, conducts at different stands and groups and pictures were taken there.

Q. And do you not know it to be a fact that before Hitler came into power your father signed an appeal to the German people, along with other German industrialists, to vote for Hitler? A. I am not aware of this fact.

754 Q. Have you any knowledge of this fact whatever? A. No, I have not.

Q. You don't know that that was true or not? A. No, I don't.

Q. You are in complete ignorance? A. Yes, I am.

Q. Didn't your father so state in his deposition? A. Please?

Q. Have you read your father's deposition? A. I read my father's deposition.

Q. And didn't he say that? A. He stated it, but I personally have no knowledge of it, except what he stated.

Q. When did you first learn of your father's connection with the Nazis? A. 1945 or '46, after the war.

Q. Under what circumstances did you learn it? A. I don't remember the circumstances.

Q. You mean you don't remember who told you or how you came to learn it? A. Yes, I think I remember now. I think it came to me by a survey of General Motors. It had some connection with General Motors. I think he had to give up his chairmanship of the board.

755 Q. The board of Adam Opel A. G.? A. Yes.

Q. And you think some General Motors official told you why? A. That is possible. I think I heard indirectly about it.

Q. I see. After you heard indirectly, did you write to him and ask him about the story? A. Do not overlook the fact that for about a year or a year and a half there was no connection between the United States and Germany, either by writing or by cables. There was no mail between the two countries.

Mr. Burling: May I have a moment, Your Honor?

By Mr. Burling:

Q. When did you first write to your father after the cessation of hostilities? A. I don't remember when the mail service was opened. I should say it was about the middle of 1946 or the end of 1946, or maybe even 1947. It was closed for quite a long time.

Q. I see. Now, you conversed with your father from time to time in Germany before you left Europe in 1940, did you not? A. Yes, I did.

Q. And he never told you anything at all about
756 party membership? A. No, he did not.

Q. Now, without going into the nature of what we have referred to as the criminal proceedings, your father was in some kind of trouble with the German Government in 1933 and 1934, was he not? A. Yes.

Q. And during those years you were not infrequently with him in his home or in Berlin? Is that true? A. I saw him in connection with this investigation, yes.

Q. You had extensive conversations with him in that connection, didn't you? Isn't that true? A. No, that is not quite correct, because I was in Switzerland, and I even refused to go to Germany. And my mother and my father's lawyer came to Switzerland imploring me to return and to help my father.

Q. Is it your testimony that in none of the conversations which you had with your father concerning the fact that the German Government was taking some sort of measures against him did he ever mention to you the fact that he was a Nazi Party member? A. No; I was completely taken by surprise when I heard such in 1946 or 1947.

Q. When did you first correspond with your father
757 after the cessation of hostilities?

Mr. Ingoldsby: The question has been answered.

Mr. Burling: I want to have it over again, to make sure I heard it correctly.

The Witness: I don't remember the exact date. I don't remember when the postal service was reopened.

By Mr. Burling:

Q. The question of when the postal service was reopened doesn't necessarily determine when you wrote a letter to your father, does it? A. I really don't know what you mean by it.

Q. Did you not correspond before it was lawful to do so? A. Before the postal service opened, you mean?

Q. Yes. A. I tried to get in contact with him, yes.

Q. You did, didn't you? A. Yes.

Q. So that your testimony relating to the postal service was designed to mislead us, was it not? A. No, definitely not, because the only thing I could do at the time was to ask a friend who went into Germany to say hello to my father and to tell me how he was.

Q. I will show you—

Mr. Gallagher: Let us see it first, will you please,
758 since we do not have a copy of it?

(The document referred to was handed to counsel for plaintiff.)

By Mr. Burling:

Q. While we are waiting, I will go on to another question:

Did your father ever indicate to you in any affirmative manner, either in words or in substance, that he was not a party member? A. I was not aware of the fact that he was a party member, and he even indicated it to me.

Q. He did in fact indicate to you that he was not a mem-

ber? A. Yes. He—at least to put it in the other way—he apparently did not want me to know that he had become a member. And I was quite amazed when I heard it, because I felt that he kept it away from me because he knows I wouldn't agree to it.

Q. Is it not the fact that in 1940, in the Zurich Railway Station, your father thanked you for having caused him to stay out of the party? A. Yes, exactly.

Q. In other words, your father lied to you in 1940 about his party membership?

Mr. Ingoldsby: I object to that, Your Honor. I
759 don't think the witness is required to draw the conclusion.

The Court: I think that is right.

Mr. Burling: I will withdraw the question.

(To counsel for plaintiff:) May we have the document?

Mr. Ingoldsby: May we have a second to look this over?

Mr. Burling: Certainly.

By Mr. Burling:

Q. Did you ever ask your father whether he was contributing any money to the Nazis— A. No.

Q. During— A. No.

Q. But you testified at the Miami hearing, however, you were definite he had never contributed anything, didn't you? A. I was definite that he hadn't, yes.

Q. You were definite he had not contributed anything to the Nazis, even though you had not asked him? A. Yes. He never told me so that he had contributed.

Q. Yes; but you had never asked him? A. I don't know that I asked him, but I always thought I would know about it, if he would do such a thing.

Mr. Burling (to counsel for plaintiff): May I have this letter now? You have had it for two years. I think that is time enough to examine it.

760 Mr. Ingoldsby: Before we go into this letter, I wonder if we might have an opportunity to find out if we have had it for two years, Your Honor? Frankly, I have never seen the letter before. I don't know whether we have it or not. If we have, it is new to me.

The reason I ask for the time at this moment, Your Honor, is that I want to look and see exactly what the order of this Court provides with reference to the Department's turning over to counsel for the plaintiff copies of all documents they intend to use. We will have that in just a moment.

The Court: You want to look at the document again?

Mr. Ingoldsby: That is what I wanted.

The Court: All right.

By Mr. Burling:

Q. You did testify, throughout the entire enemy alien proceedings, over and over again, did you not, that no member of the Opel family was a party member or associated in any way with the party, did you not? A. Yes, sir; I was convinced.

Q. And you were living in Switzerland for a considerable part of the period between the advent of Hitler and the outbreak of war? A. Yes, sir.

Q. Wasn't your first cousin, Hans von Opel, a prominent leader of the Nazi movement in Switzerland? A. I
761 don't think so. No, I think I would have heard about it.

Q. You never heard about it? A. No. I heard after the war.

Mr. Ingoldsby: If Your Honor please, the reason for taking the time at this particular moment is the fact that we have never before seen this letter which purports to be a copy of a letter written by Fritz von Opel to his father

on November 10, 1945. I don't want to be in error. Therefore I cannot state definitely.

But it was either by agreement of the parties or by order of this Court that all copies of documents which the Government intended to use in connection with this case would be turned over to the plaintiff.

I don't want to make a rash statement, as I say, because possibly it has been turned over to us, and in the welter and confusion of documents, for some reason or other we have not seen it. I am simply accounting for the time taken in looking it over. We are perfectly satisfied it is all right, and Mr. Burling may use it for whatever purpose he desires.

Mr. Burling: If Your Honor please, since I didn't come into the case until recently, I would ask Mr. Baum to make the response to counsel.

Mr. Baum: We obtained in December, 1946, Your Honor, a volume of some 200 documents from Wilhelm von Opel—

762 The Court: Gentlemen, I think you are wasting a lot of time now. Mr. Ingoldsby was just explaining why he took a long time to examine the letter. I think in going into that further we are wasting a lot of time on trifles. We will have to get down to the case, now.

By Mr. Burling:

Q. I show you Defendant's Exhibit 36-A and ask you if that is not a copy of a letter you wrote to your father on November 10, 1945. A. Yes, that is so.

Mr. Burling: I offer it in evidence, Your Honor—Defendant's Exhibit 36 and 36-A.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 36 and 36-A.)

By Mr. Burling:

Q. How did you cause this letter to be delivered to your father?

Mr. Ingoldsby: I object to that, Your Honor.
The Court: What is the materiality, Mr. Burling?
Mr. Burling: I will withdraw it.

By Mr. Burling:

Q. Will you please look at Plaintiff's Exhibit 3, which is the escrow agreement of 1929.

When did you first see that instrument? A. I
763 saw that in connection with talks preceding the gift agreement. It is possible that my father sent me a copy of it to Antwerp.

Q. While you were in Antwerp, you knew in general of the provisions of the agreement, did you not? A. No, I did not know the details. I did not know where the shares were held. And I did not know that there was no provision made for an equivalent between reichsmarks and dollars, or gold, because it was very unusual in contracts of this sort.

Q. But you did know, from 1929 until 1931, did you not, that the 600 shares of Opel stock were in escrow and that General Motors could buy them at its option, or your father could sell them at his option? A. In a general way I knew it, but I didn't know those important details.

Q. Whether or not you knew the details, you knew the essence of the agreement, didn't you? A. I knew my father had retained 10 per cent.

Q. You knew the 10 per cent had been subjected to the escrow and the cross option agreements, didn't you? A. I don't think I knew so much about it. Anyhow, I did not know this most important detail, that they were pledged, put up in New York with the National City Bank.

Q. Did you see this, in the affidavit which you
764 filed in the gold case?—

"Prior to the drafting and execution of the deed of gift"—

Which was Exhibit R to that affidavit? A. Yes.

Mr. Burling: This is folio 138, if Your Honor please—

"I had no knowledge of the existence of the escrow agreement, Exhibit Q, relative to these 600 shares of Adam Opel A. G."

The Witness: Yes, that is correct.

By Mr. Burling:

Q. You had no knowledge of the escrow agreement—
A. Yes.

Q. —prior to the drafting of this deed of gift which you said took place on October 5? A. About those details yes, I had no knowledge of it.

Q. You don't say here that you had no knowledge of what bank the agreement is in. You said, "I had no knowledge of the existence of the escrow agreement."

Isn't that right?

Mr. Ingoldsby: Doesn't that go on to say "relative to these 600 shares"?

Mr. Burling: "Relative to these 600 shares of Adam Opel, A. G.," yes, sir.

The Witness: I only knew my father had retained
765 10 per cent, but I did not know there was an escrow agreement, particularly since the word "escrow" was entirely new to me.

Q. You did not know that until October 5? A. No—just prior to the drafting and my talks with Mr. Hachenburg.

Q. That is when you first learned about this? A. Yes, those days. I don't know whether three or four days previous. I don't remember that.

Q. In folio 132, you said as follows, referring to the escrow agreement:

"It provided in substance for the retention of the stock certificates by National City Bank until April 1, 1934, and for an option either to General Motors Corporation to buy or to my father to sell after March 31, 1931, at graduated prices varying between 23,000 reichsmarks and 30,000 reichsmarks per share. I did not know of the existence of this particular agreement until October, 1931, hereinafter stated."

That is the correct statement? A. Yes. I wouldn't say the date October is entirely correct. It might have been the last day of September. Anyhow, in general, in connection with this gift agreement and the drafting of it, in this connection I heard for the first time the details of this escrow agreement.

Q. You were examined by a representative of the
766 Department of Justice in Gloucester City— A. Where, please?

Q. Gloucester City, New Jersey. A. Yes.

Q. In May, 1945. Is that correct? A. Yes.

Q. Will you state whether or not you said this at that time—

"Then I was transferred to General Motors Antwerp Continental Assembly Plant, and I worked in the General Motors plant for three-quarters of a year as the manager of that plant."

A. That is wrong.

Q. What? A. It must be a misprint. I was no manager there.

Q. (Reading): And saw a friend of mine by the name of Nicholas Van Sittart, a member of the English Propaganda Ministry, in 1931." A. That is not correct.

Q. (Reading): "The devaluation of the pound was quite a shock to Mr. Van Sittart, because he was an Englishman." A. Yes.

Q. (Reading): "I remembered this agreement my father had concerning this 10 per cent, and I immediately telephoned and my father sent me a copy of this agreement, which I wanted to check and see whether it was
767 proper." A. Yes; that was at the time of the gift agreement. Immediately afterward, I went to Ruesselsheim.

Q. But at this time you said that while in Antwerp you remembered the agreement and telephoned your father and he sent you a copy? A. You will have to get that right. I remember Mr. Van Sittart reminded me there was 10 per cent retained, and he told me to go to Ruesselsheim and straighten that out.

Q. Mr. Van Sittart had knowledge of the escrow agreement? A. Yes; he was one of the managers of General Motors, and he knew in general that General Motors had only taken over 80 per cent, and 20 per cent were left out. I knew that too; but he was the one who told me, "Don't let the same thing happen to your family what happened to mine." He said, "You will lose through devaluation."

Q. He told you, "Don't let happen to your family what happened to mine"? Is that right? A. Yes, certainly. He had suffered a loss. His capital was sequestered in England, as I understood. And he said, "Is there an agreement between the members of your family and General Motors, covering the remainder of the stock sold?"

Q. But your statement made at Gloucester City is
768 that "I remembered this agreement"—and then skipping—"and I immediately telephoned and my father sent me a copy of this agreement." A. That is what I just said.

Q. That you did remember the agreement? A. I remembered an agreement in general, that there was 20 per cent left out of the sale. Everybody knows it.

Q. At any rate, there isn't any doubt now, is there, that this escrow agreement subjugated the 600 shares of Opel to the terms of the agreement? A. Yes, certainly.

Q. And will you agree with me that the 600 shares represented a fair half of your father's fortune? A. It all depends at which time you make this measurement. If you take it in 1931 when the gift was given, I think it then was about 30 per cent.

Later on, after my father had suffered various losses, it then was maybe half.

Now I will say it is even far more than half, maybe 70 or 80 per cent now.

Q. Did you not state, in a memorandum which you handed to the Department of Justice in 1943, as follows?—

"In 1931 he, Wilhelm von Opel, had given me the fair half of his fortune"?

A. That is, looking upon it from hindsight.

769 Mr. Ingoldsby: Your Honor, may I submit that on a memorandum of that type it should be shown the witness so that he might read it in its proper context, if there is such a memorandum.

The Court: If he has trouble with the question, it is all right.

Mr. Burling: There is no doubt counsel knows about the memorandum. It has been furnished to him.

Mr. Ingoldsby: There are a lot of things we don't know.

By Mr. Burling:

Q. Going back to the fall of 1931; the fact is that your personal relations with your father were quite cool? Isn't that right? A. No, that is not quite correct, Mr. Burling. If you want to go into this matter, we will have to go into it in detail.

Q. That is what I wish to do, Mr. von Opel. A. And not

make general statements. Do you want me to explain that?

Q. No; I shall inquire in detail. A. Please.

Q. Well, starting in 1939, you will agree, will you not—

A. 1929?

770 Q. I am sorry; thank you.

Starting in 1929, you will agree with me, will you not, that the relations between you and your mother and father were severely strained? A. They were very good all through the year 1929, up to October, 1929, when I married. And they remained somewhat estranged for about, I would say, my father met my wife already at Christmas, 1930. So at this time definitely, at least as far as my father and I and my wife was concerned, peace was established again. With my mother, it took somewhat longer.

Q. It never was established with your mother, was it? A. Please?

Q. It never was established with your mother, was it? A. You are very mistaken, Mr. Burling. My mother visited us frequently in St. Moritz.

Q. I see. Isn't it the fact that one of the reasons you came to America in 1929 is that there was discord with your family? A. It was some of the reason, yes.

Q. You have previously so stated, have you not? A. Yes; it was a contributing factor.

Q. Now, in the course of the Gloucester City interrogations, you stated, did you not, that one of the reasons you determined to move your domicile to Switzerland

771 was because you were not on too good terms with your family? A. That relates to the time of, I think, 1932 or 1933. At these times there were still slight misunderstandings with my mother, and particularly with my uncle. I had entirely broken with my uncle.

Q. Were you not asked this question, and did you not give this answer?—

"Well, can you be more specific as to what led you to move your domicile to Switzerland?

"Answer: There were several personal reasons. I wasn't on too good terms with my family, and I wanted to stay away."

A. Yes; it was one of several reasons, as it says there.

Q. And you didn't take up domicile or residence in Switzerland until early in 1932? Is that right? A. I lived there for the first time in 1931.

Q. When, please? A. In 1931.

Q. When? What month? A. I think I lived there from the end of the year to about, I guess about May, I would say.

Q. Is that the time when you said that one of the reasons you moved your domicile to Switzerland was that you were not on too good terms with your family and you
772 wanted to stay away?—

And that relates to a time after the alleged gift of the 600 Opel shares? Isn't that right? A. Yes, definitely. But I explained to you, at this time—

Q. If you wish to testify on an additional matter beyond my question, your counsel will have adequate opportunity to bring it out.

Now, the difficulties between you and your parents, which your marriage caused, continued to exist until you last left Europe, did they not? A. Until I did what?

Q. Until 1940, when you left Europe for the last time. A. Oh, definitely not. You are entirely mistaken.

If you will be kind enough, for instance, to take Defendant's Exhibit No. 27, you will see there a letter written in 1939 from my father to me, where he sends his heartiest regards to my wife and myself, which shows we were certainly on good terms.

Q. Your father and your wife were on good terms in 1939? Is that right? A. I should say so, yes.

Q. When was your father reconciled to your marriage? A. I told you he saw my wife first at Christmas, 1930. When he saw her first, and when he was reconciled

773 to the marriage—then he met her first and accepted her socially, or whatever you might call it.

Q. And, after that, the relation between the various members of the family was friendly? Was that right? A. My relations with my father, so to say, were, irrespective of my marriage, always very good.

Q. And I again ask you to answer the question I ask you, and not something else.

Is it your testimony that the relations between you, your wife, your mother, and your father were all friendly after 1931? A. I wouldn't make such a statement, Mr. Burling. You cannot lump four people together, you see. You see, there are several interrelations, as I told you before.

Q. Was any of those interrelations very unfriendly? A. I tried to explain that to you. My relations with my father, even irrespective of my marriage, and even in the first year of it, were always friendly.

Q. Go ahead, please. A. Yes. Of course, I resented he didn't want to meet my wife, and you can call that a strained relation. But after he met her, and after he accepted her, this relation was then on the old terms. However, with my mother, it took somewhat longer.

Q. How long? A. I don't remember that in de-
774 tail, but I should say offhand, two or three years longer.

Q. Is it not the fact that your wife rarely saw your father from the time you were married up to the day he died? A. No, you are mistaken. He very often visited us and always told us he spends the happiest hours of his life with us at St. Moritz.

It isn't normal that a father visits a son whom he hates and stays in the house with the wife he dislikes.

Mr. Burling: I move to strike that, Your Honor, on the ground it is not responsive.

By Mr. Burling:

Q. Didn't you say this, to the Miami hearing board?—and I am reading from page 90—

"How long were you there at this time?"

Weren't you asked, first, when were you last in Wiesbaden, and didn't you say 1939?—and then:

"How long were you there at this time?

"Answer: At this time it is hard to say; maybe a week or two weeks.

"Was your wife with you?

"No. She was in Germany once in a while, but she does not see my mother and my father only occasionally."

A. Yes, that is correct.

775 Q. You did say that? A. Yes.

Q. You were present, were you not, in the Miami hearing board when Mrs. von Opel testified? A. Not during her entire testimony.

Q. Well, did you hear Mrs. von Opel say the following words to the hearing board?—

Mr. Ingoldsby: Just a moment, please.

I object to that, if Your Honor please.

The Court: I guess I will have to sustain that.

Mr. Burling: I submit, Your Honor, if this witness was present when there was a joint hearing and Mrs. von Opel made statements in his presence about the family relations and this witness acquiesced in that, that becomes admissible against him.

The Court: I will have to sustain that.

By Mr. Burling:

Q. Didn't you say to the Miami hearing board—

"It is not only with my mother, but with my whole family I am not on very good terms. Since 1929 I have hardly seen

anybody. My mother accompanied my father a couple of times on visits"?

A. That refers apparently to my entire family. We have quite a large family, at least twelve or fifteen people.

And with the exception of my father and occasional-
776 ly my mother, I am practically without any contact with them.

Q. Mr. von Opel, did you or did you not tell the Miami hearing board that you had seen your mother once since 1929? A. Once, no. I saw her—that might be a mistake in the hearing board. That would be a ridiculous statement to make, because I saw her at least—she visited us in St. Moritz at least two or three times.

Q. The question once again, Mr. von Opel, is, did you testify that at the Miami hearing board? A. I cannot remember that, Mr. Burling. But this whole transcript is so full of mistakes and blunders. I can show you the most ridiculous statements on any page of it.

Q. Wasn't it your purpose before the Miami hearing board to indicate that you had substantially no connection of any kind with Germany?—with your own family or otherwise? A. I stated the facts as they were at the time.

Q. Did you or did you not consider yourself on good terms with your family at the time you testified before the Miami hearing board?

Mr. Ingoldsby: I object, if Your Honor please. I think that topic has been fully explored.

The Court: I will let him complete this line.

Mr. Burling: I have only a question or two more, Your Honor, on this.

* * * * *

778-780 By Mr. Burling:

Q. Did you not say, in the course of the Gloucester City interrogation?—

"I wasn't on too good terms with my family"?

A. I just stated, that that referred to the family in general, to all my cousins, and other members of my family.

781 Q. Mr. von Opel, coming to another topic, Adler & Company is a banking house in Zurich, is it not?

A. Yes, sir.

Q. You testified on direct that your father in the spring of 1931 was in possession of a bank account with the Credit Swiss, is it? A. I don't remember which bank it was.

Q. A Swiss bank? A. Some Swiss bank, yes. It was not the Adler Bank. One of the three or four big banks.

Q. One of the big banks? A. Yes.

Q. And that credit was 3,500,000 Swiss francs? A. Yes.

Q. And is it not a fact that your father obligated the 3,500,000 Swiss francs in your favor in the spring of 1931? A. Yes.

Q. In the spring of '31 you commenced negotiations with regard to the purchase of the stock of the plaintiff corporation here; is that not so? A. Yes.

Q. At that time the stock was held either by Adler or by clients of Adler? A. That is right.

Q. And the man you negotiated with was Mr. Hans

782 Frankenburg? A. Yes, sir.

Q. Is it correct that the proposition Frankenburg made to you was to give you an option whereby you could purchase the shares, probably all of the shares of the plaintiff corporation, for 300,000 Swiss francs? A. No, that is not correct.

Q. What is wrong so far? A. You said: All of the shares.

Q. Well, all except the three qualifying shares needed to qualify directors? A. No; all except 40 percent of the shares.

Q. And the option related to 60 percent of the shares? A. Yes, sir.

Q. And the further part of the offer was if you were to purchase the 60 percent under the option, you would then lend to the corporation 3,500,000 Swiss francs? A. Yes, sir.

Q. Now, is it a fact that you obtained the option from Adler & Company? A. Yes.

Q. In the spring of '31? A. Yes, sir.

Q. At that time your father obligated himself to put up the 3,500,000 francs in case the option was exercised?

783 A. Yes, sir.

Q. Now, Mr. von Opel, I show you Defendant's Exhibit 37-A and ask you if that is not— A. (Interposing) Yes, that seems to be.

Q. This letter from Adler to you offering to give you an option under certain conditions? A. Yes.

Q. Can you read the signature? A. No, I can't.

Q. But you received this letter? A. Yes, I did.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

(Document previously identified as Defendant's Exhibit 37-A was received in evidence.)

By Mr. Burling:

Q. I show you defendant's Exhibit 38-A and ask you if that is a copy of the letter which you sent to Adler? A. Yes.

Mr Burling: I offer it in evidence.

Mr. Gallagher: No objection.

(Document previously identified as Defendant's Exhibit 38-A was received in evidence.)

784 By Mr. Burling:

Q. And this option was a cross option, was it not? A. That is right; yes, sir.

Q. That is, when you accepted you obligated yourself at the request of Adler & Company to purchase 60 percent of the shares for 300,000 francs and to lend the corporation 3,500,000? A. That is not quite correct. I think the letter refers if I exercised the option that I had to pay 375,000 for the 300 shares.

Q. Yes, but if Adler & Company exercised the option against you, then there would be a legally binding contract, would there not, requiring you both to purchase and to lend the 3,500,000 francs? A. At a considerably lower price, if they exercised, and I only put up, instead of 375,000 francs, 315,000, if I recall.

Q. Yes, but if they exercised it, you were obligated to advance 3,500,000 francs, were you not? A. They guaranteed that the value received for my payment of 315,000 was at least 300,000—

Q. (Interposing): Yes, but my point is: If Adler & Company exercised its option it could require you to advance 3,500,000 francs; isn't that true? A. Yes, if they exercised, yes. It was an underlying idea of the whole deal.

785 Q. And that was your approximate personal net worth in the spring of 1931? A. I had—I think my liabilities were greater than my assets.

Q. At any rate, you didn't have 3,500,000 francs for Uebersee Korporation? A. Oh, definitely not.

Q. And you planned to use your father's money in this transaction? A. Certainly. That is what he promised to give to me. Only on the face of his promise could I do it, or otherwise I wouldn't have signed such a letter obligating me. How could I?

fied the appropriate German authorities of the existence

Q. Isn't it a fact in September of '31 your father noti-

of the guaranty and applied for a license to dispose of the Swiss francs? A. Yes, certainly. He had to do that under the foreign currency regulations.

Q. I will ask you to examine Defendant's D1A and D2A and ask whether they are not respectively a letter informing the authorities and the application for a license? A. Yes, sir.

Q. And that was sent to the authorities September 9th, was it not? A. I don't know. It shows the date on the letter.

786

Q. You have no reason to suppose the date is not correct? A. No, I don't think so.

Q. And was the application acted upon, if so, when? A. I think, already at the time this application was filed, my father was pretty sure that we would not get it permitted, and I at the time, just in those days of the gift agreement, I explained to him that had he made me an outright gift at this time, namely, in April, of this year, I would have had it, and we would need to file applications, but leaving it pending and giving me a loan, so to say, made it nearly impossible now to get it permitted.

Q. My question was: was this application ever acted upon, and if so, when? A. I could not tell you because there must be answering letters, and if you go through, you must find the answers also.

Q. You don't know what happened to this application? A. I know my part of it. I already mentioned that yesterday, and that was drawn out for a long time, and as the time of December approached—how do you say, I attached it in Switzerland.

Q. We will come to that.

You don't know if this was ever acted upon by the German Government? A. There was no positive action taken, and I think even in May, April or May of the following year, that would be 1932, it was rejected.

787

Q. In April or May '32? A. I think so, yes.

Q. Now, I ask you to look at Defendant's 39-A and state whether that is not a letter from the Deutsche Bank und Discounto Gesellschaft, the foreign exchange department? A. That seems to be the reply to the first letter. It is the reply.

Q. And it is dated September 17, '31? A. This one reads to the—

Q. (Interposing) If you would only answer the question. It is dated September the 17th, isn't it? A. Yes; that is correct.

Q. And it asks for additional information? A. I haven't read it yet.

Yes, they ask for additional information, and they say that it will take at least ten days to make a decision.

Q. So that on September 17th, you were advised that the German authorities hadn't decided whether to permit these 3,500,000 francs transfer in Switzerland, and asked for more information, as they said it would
788 take more than 10 days to act on the application? A. Yes.

Mr. Burling: I offer this in evidence.

Mr. Gallagher: No objection.

(Document previously marked for identification as Defendant's Exhibit 39-A was received in evidence.)

By Mr. Burling:

Q. And the request for additional information was complied with by your father, was it not? A. I could not tell you that.

I didn't attend to his side of this affair, only to my side.

Most of these papers I saw several months ago for the first time.

Q. I show you Defendant's Exhibit 40-A and ask you

if that is not a letter addressed to your father from the Reichs Bank at Wiesbaden? A. Pardon me?

Q. Is that not a letter sent from the Reichs Bank to your father? A. The Reichs Bank at Wiesbaden, the branch of the Reichs Bank.

Q. That appears to be October 22nd, '31, doesn't it? A. Yes, sir.

Q. And that indicates that the German financial
789 authorities were still considering the question of whether to give your father a license to transfer the Swiss francs to Uebersee? A. Yes, as I told you before, we were pretty sure we would not get it at all.

Q. Look at page 2 and say if you see some handwriting on the bottom. A. Yes.

Q. The signature is Faust, is it not? A. Yes.

Q. And he was the lawyer at the Opel works? A. I think he is not a lawyer; he is financial.

Q. Assistant treasurer attending to the tax matters of Opel Corporation under General Motors?

Do you recognize that signature? A. If you will tell me it is Faust, I take it for it, otherwise, I wouldn't know.

Mr. Burling: I wouldn't know either.

I offer this in evidence.

(Document previously identified as Defendant's Exhibit 40-A was received in evidence.)

By Mr. Burling:

Q. At any rate, on October the 5th, 1931, when you say your father gave you the 600 Opel shares, you didn't say to him: Then, of course, I will not receive these
3,500,000 Swiss francs, but instead you went on
790 and negotiated for the license to lend the Swiss francs to Uebersee; isn't that right? A. That is right.

Q. That is correct, isn't it? A. Yes, it is correct, but I have to tell you—

Q. (Interposing) You may tell the Court anything that your counsel asks you on redirect examination, but your obligation is to answer my questions now.

Now, on December 17th, 1931, Adler & Company exercised its right to require you to go through with the transaction, did it not? A. Yes.

Q. And that created a legal obligation under Swiss law for you to purchase the 60 percent of the shares of the plaintiff and to advance 3,500,000 Swiss francs? A. So to say, it set the guaranty in motion my father had given.

Q. But the guaranty ran against you? A. Yes.

Q. And your father had guaranteed your obligation? A. Yes, and I had in turn the corporation.

Q. Now, to the best of your knowledge and ability, did your father receive any statement from any German financial office on or prior to October 5th 1931, to the effect that the Swiss accounting transaction would not be permitted? A. No. The foreign fund control had just
791 came in, but it was our general impression that we would not get permission, but up to this date, he hadn't received final reply, and the final reply came in April or May, 1932.

Q. What discussion did you have with your father as to why he thought the license would not be granted that had been applied for? A. The general economic situation, and the foreign funds control laws which had just been issued.

Q. What discussion did you have with your father on the occasion of his making the gift which you say he made on October the 5th, concerning this Swiss account of 3,500,000 Swiss francs? A. At the beginning of the conversation, I told him that—I said: It seems absolutely hopeless that this permission is ever to be granted, and I told him that it certainly was a mistake that he hadn't given it outright to me, because if that had been done, I

could have kept it without making obligation, and I further told him that, in my opinion, after he had told the German authorities that this money, this three and a half million Swiss francs were needed to set me up in business in a foreign country, certainly he could not drop the matter all of a sudden because otherwise the German authorities might get suspicious and should ask how it is possible that all of a sudden he gives it up, and what went on there and what we don't know. Do you see?

Yesterday I expressed the fact that I advised
792 my father to keep the matter secret as long as possible to avoid any retroactive action.

Q. But you did come to an oral understanding with your father at the time of the gift agreement that when you could you would give up this Swiss transaction? A. I don't know what I told him at the time. Later on, I think it was after my return from America, if I remember correctly, I told him I would fight some delaying action in Switzerland and ultimately give it up.

Q. What did you say to him on October the 5th about the Swiss transaction? A. On October the 5th I told him what I just have said, that we both had made a big mistake, he not offering me a gift, and I not insisting on outright a gift.

Q. Was it agreed between you whether you were going to keep it secret? Was it agreed between you that you were going to drop the Swiss transaction at that time? A. No, you can't call that an agreement. I merely suggested—it is hard to say—I advised him what to do and I said to keep the matter secret.

It would be better to fight a delaying action and not drop it all of a sudden.

Q. But was it agreed between you, whenever the shares were transferred, that sooner or later the Swiss
793 transaction would be dropped? A. I would not go so far.

Q. It may be that your father intended not only to give you the 600 Opel shares, but also the 3,500,000 Swiss

francs? A. That is a misstatement of facts, because it is not—this agreement does not speak about gifts, but speaks about a loan of one year, so ultimately after a year anyhow we would have to give it up, so it was no use fighting a vehement fight for a one-year loan, after I had received everything else.

Q. Did you or not intend at the time of the transfer of the Opel shares to you to go ahead and purchase at least 60 percent of Uebersee? A. Oh, yes.

Q. You did intend that? A. I had this agreement running, which you showed me.

Q. Did you intend to carry out the terms of the agreement, or did you intend to try to back out of it? A. After I had received the gift, I changed my mind in this matter.

As I explained to you yesterday, this original, this corporation was originally intended as an international patent exchange affair in which several friends of mine wanted to take part, and after I had been given the gift of the Opel shares, I thought I should not bother with this matter. It would take too much of my personal time and attention and I already expressed, at this time,
794 I think it was in December, to Adler, that Uebersee—

Q. (Interposing) You aren't answering the question at all. A. I am sorry.

Q. At the time this transaction took place between your father and you, whenever it took place, did you and your father say to each other that we would not carry through the Uebersee transaction, or, on the other hand, did you say: We will go ahead and buy Uebersee shares nevertheless? A. There was no agreement of this sort, Mr. Burling.

I told you before I told my father in general we should not drop the matter all of a sudden.

Q. You have said that many times, but I asked you the same question and I didn't get an answer.

I want to know what was to be done about the Swiss transaction. Was it intended to go ahead and carry it through so that you would buy Uebersee shares, or was it merely intended to fight a delaying action? A. You asked me about October the 5th.

Q. On October the 5th? A. At this time we had other considerations and other things in mind, and the gift meant so much more to me than some loan, that at this time I don't remember if we went into this matter thoroughly.

Q. Whether or not you went into it thoroughly,
795 did you promise your father to go ahead and buy Uebersee? A. There was no promise necessary. He never had any interest in Overseas, so why should I promise it to him. We discussed the situation later.

Q. I am talking about whatever date that is. You said October and I say November, but whatever date this took place.

At that time, did you promise your father to buy the shares of Uebersee?

Mr. Ingoldsby: The question earlier was: Did you express your intention with respect to the Swiss transaction and did your father express his intention.

I think a lot of discussion would be eliminated if it could be determined whether there was any discussion relating to the Uebersee situation on the date of October the 5th.

The Court: Yes, I think so.

By Mr. Burling:

Q. On the date this transaction took place, did you agree with your father that he would buy the shares of Uebersee? A. I think you are mixing up two different things, Mr. Burling.

Q. Will you answer the question yes or no? A. Do

you mean Overseas is covered and in the framing of the agreement we are speaking about?

Q. On the date of this transaction, did you make
796 any comment to your father with regard to purchasing the Uebersee shares in any manner? A. No, I did not.

Q. You made no agreement whatever with your father on this date regarding the shares of Uebersee? A. Not in regard to the transaction covered by the Adler agreement.

Q. Did you make any agreement—do you know what the word "any" means? A. Yes.

Q. Any agreement on the date of this transaction with your father regarding the shares of Uebersee in any manner? A. Not on this date, Mr. Burling.

Q. The answer is no; is that it? A. The answer is No.

Q. Thank you.

Did you make any agreement with your father regarding the purchase of shares in any holding company whatsoever? A. My father—

Q. The answer to that is yes or no, isn't it?

Mr. Ingoldsby: Which date is that?

Mr. Burling: Whatever date the purported instrument, Plaintiff's Exhibit 5 was executed.

Mr. Ingoldsby: The conversation he had on the particular day—we contend October the 5th, 1931. If
797 this occurred on that particular date, all right.

By Mr. Burling:

Q. I think he has made it clear. Either October the 5th as you contend, or November as I contend. A. What is the question?

Mr. Burling: Will you read the question?

(The pending question was read.)

The Witness: I suggested at the time to my father that I might acquire some Swiss corporation.

I don't know the exact date at which I made such suggestion. It might have been October the 5th; it might have been after my return, and it is more likely that it was after my return from New York.

By Mr. Burling:

Q. So your best recollection is that at the time of the execution of Plaintiff's Exhibit 5, which is the gift agreement, you didn't make any promise to your father with respect to any holding company? A. He didn't want a holding company.

Q. That is not responsive to the question.

Did you or not make such a promise? A. I just answered the question to the best of my recollection.

I mentioned to him that I might ultimately buy a Swiss corporation.

798 Q. But you said you thought that was in November. A. I didn't say in November. I said it was either October the 5th, or more likely after my return from New York.

Q. So your testimony is that it was more likely than not that you didn't agree on October the 5th with your father to acquire the shares of a holding company? A. I think it was no topic—there was no definite promise given by me, if you mean that. I told him about my intentions, you see.

Q. When did you tell him those? A. As I already told you, there on October the 5th.

Q. You testified that you think it is more likely than not it was on October the 5th, but it was most likely November the 5th? A. It could have been both.

Q. Is it more likely, in your opinion, that it didn't happen in November? A. I would not make a guess.

Q. You don't know; is that it? A. I would not make a guess. I am not sure on which date it was, and I certainly

didn't make a promise because my father didn't want it. It was exactly as I wished to have it cut out of the gift agreement, so it would be silly for me to procure something which he didn't want.

799 Q. Didn't you make an oral agreement with your father on the date that this Plaintiff's Exhibit 5 was executed agreeing to buy the holding company and put the proceeds of the Opel shares— A. (Interposing) I suggested it to him.

Q. At the time? A. I think so, yes, that is possible.

Q. Of course, it is possible, but didn't you say more likely than not it didn't happen then? A. It was either of two possibilities, before my leaving or after my return. It was only three weeks.

Q. In any event, you did say at folio 138, page 46, in the Gold case, did you not, in connection with the execution on the delivery of this deed of gift:

"My father received an oral stipulation from me which was not included in the document, to the effect that these shares or their proceeds would be transferred by me immediately to a corporation whose shares would be distributed or held so as to safeguard the various interests in the stock or its proceeds set forth in the deed of gift"? A. That is right.

Mr. Ingoldsby: What is the statement? What is the date of the statement?

Mr. Burling: The affidavit of the witness, dated
800 June 7, 1935.

By Mr. Burling:

Q. Was that a correct statement? A. Yes. It was my intention that I mentioned it to my father.

Q. Did he receive an oral stipulation from you that you would do this? A. My father, of course, didn't object to my doing it, and I explained my reasons for it, and he told me that he would leave it to me, what to do, and I

said I thought I should not hurry things, to wait a little.

Q. Please answer my next question yes or no.

Is it correct that your father received an oral stipulation that you would buy—that you would transfer the Opel shares or their proceeds to a corporation? A. That is what I told him I would do.

Q. I ask you to answer that question yes or no. It can be answered. A. It is an absolutely perfect statement, yes.

Q. It is correct? A. Yes, I think so.

Q. And you had in mind at that time the plaintiff corporation, did you not? A. At this particular time, the plaintiff corporation was—

801 Q. (Interposing) I wonder if you would answer this question: Did you or did you not have in mind Uebersee Finanz Korporation? A. No, sir; at this time, not.

Q. Thank you.

But you did think so in the Gold case, did you not, referring to what went on in New York:

"For this purpose I had in mind Uebersee Finanz-Korporation, A. G., an option on which was pending as hereinafter described."

I have read folio 150, page 50, in the Gold case. A. As I told you before, I had first got rid of the obligations. I had only 60 percent of the Overseas Corporation, using my option, so how could I use Overseas as a holding corporation? It doesn't make any sense.

Q. Well, I didn't swear to this; you did.

This is your affidavit, isn't it? A. Yes.

Q. You are not in any doubt I was reading from your affidavit, are you? A. Yes.

Q. I will read a little before to indicate what you said:

"In connection with the receipt of these payments and with these transfers and in accordance with the

802 conversation above described with my father, it was my purpose to transfer the entire amount of cash

and securities as soon as possible to a corporation, the stock of which, like the original cost and securities themselves, would be held subject to the terms of the deed of gift, Exhibit R,"

and then you say:

"For this purpose I had in mind Uebersee Finanz-Korporation, A. G.,"—

A. (Interposing) I spoke about the corporation first, and then so I had in mind Overseas, which was, of course, which implies I could get one hundred percent of the stock, otherwise, I could not use it.

Q. And you had first been told about Uebersee by Dr. Hans Frankenburg, hadn't you? A. Yes.

Q. And ultimately when you did purchase it, he handled the transaction, didn't he? A. He did, yes.

Q. Is it not a fact in December, '31, Adler informed you that it intended to exercise its option? A. Yes; that is what they did.

Q. I show you Defendant's Exhibit 41-A and ask you if that is the telegram which you sent to your father on December the 19th, 1931? A. That is correct.

803 Mr. Burling: I offer it in evidence.

(Document previously identified as Defendant's Exhibit 41-A was received in evidence.)

By Mr. Burling:

Q. Now, what happened after Adler advised you that it was exercising its option? A. I told Adler that apparently it was unable—it was impossible to get this three-and-a-half-million-franc loan from my father, but that I would be willing, and instead of acquiring 60 percent of the stock, to go ahead with the setup first intended, to acquire one hundred percent of the corporation for my own purposes.

Q. And Adler agreed with that; is that correct? A. Yes,

and they somewhat later but around this time. I paid for the corporation, I think, I think it was around February, 1932.

Q. Again, when you say Adler, we are talking about negotiations carried on by you with Frankenburg; is that right? A. Yes. Frankenburg was the manager, the director of Adler.

Q. Now, ultimately the German Government did refuse your father's application for license to apply the 3,500,000 Swiss francs? A. Yes, sir. In May, I think it was.

804 Q. March, wasn't it? Wasn't it in March. A. Around this time, I think it was a little later. It might be March.

Q. Will you examine Defendant's Exhibit No. 42-A and state whether you don't recognize that as the denial of the license covering the 3,500,000 francs transaction? A. That is correct.

Q. Does the date on this instrument refresh your recollection? A. It was March '31. I thought it was a little later.

Q. Now, after the license was turned down, what did you do with respect to your father's account in the Zurich bank? A. I released it.

Q. What did you do first with respect to your father's—you released what? A. I released the attached account.

Q. You had attached the account? A. I had said so previously.

Q. And when did you attach it? A. At the time when the option expired. I think it was in December, if I am not mistaken, December, '31.

Q. What conversation did you have with your father prior to your attaching your father's bank account

805 for 3,500,000 Swiss francs? A. I don't know whether I had any conversation.

I think he knew what I was doing, that I had suggested to him that I was fighting a delaying action, and that is exactly what I did.

Q. You mean that without any specific conversation with him and two months after he had made a gift to you of approximately $3,700,000, you attached your father's bank account without any further discussion with him about that? A. I told you that I had suggested to him that it would be better to fight a delaying action, so not to arouse the suspicion of the German Government.

For this reason we even retreated two steps. First, he gave the capital, the 375,000 francs, to find an excuse for it. I think he reported that I had gotten that from another group, that I didn't need the capital; then the second step back was that I gave up the attachment.

Q. Will you explain the first step in a little more detail? What did you report and to whom? A. First, my father—I told my father that he should reduce his obligation in steps, and the first step, he told the authorities that he didn't need the 375,000 francs, which I had been promised for acquisition of Overseas.

Q. What else did he say? A. That was the first step.

Q. You said something about another group. Will
806 you explain that, please? A. And I told my father—

Q. (Interposing) Will you explain what you meant when you said you reported something about another group. Just explain that. A. I told my father that not to arouse suspicion of the authorities in this matter, that he had to give some explanation, and he should say that I had been provided with the captial from some friends of mine.

Q. That wasn't true, was it? A. No, not—

Q. (Interposing) In other words, you advised your father to make a false report to the German foreign exchange authorities? A. It wasn't a report. It was just a mention that I had made the statement. He didn't make it; I made it.

Q. To whom did you make it? A. I made—I wrote it to my father's secretary.

Q. You wrote it to your father's secretary? Recommending that your father file a false report; is that correct? A. No; definitely not.

Mr. Ingoldsby: I object to the witness being asked to draw a conclusion.

The Court: He said, "No."

By Mr. Burling:

Q. And at this time what government was in
807 power in Germany? A. At this time I think it was General Schleicher.

Q. Wasn't it President Breuning? A. It was '31.

Mr. Ingoldsby: What time is this?

Mr. Burling: At the time that he recommended filing that report.

The Witness: I didn't say that, Mr. Burling.

I wrote a letter to my father's secretary mentioning that I didn't need the capital because I had been provided with this capital by some friends.

Mr. Burling: I see.

The Witness: That is all I did.

By Mr. Burling:

Q. But you hadn't been provided with the capital by friends, had you? A. If you don't call my father my friend—I had the capital in the meantime.

Q. Would you call your father a group of friends? A. No; my mother and my father, maybe.

Q. Do you ordinarily speak of your mother and your father as a group of friends? A. No, not ordinarily.

The Court: He said a while ago what it was.

By Mr. Burling:

Q. At the time you attached your father's account,
808 did you file an affidavit or appear in some manner in a Swiss court? A. I don't know the details.

Q. What is your recollection of how you managed to attach your father's bank account? A. I think I stated the facts to a lawyer, and I gave him several documents, especially the document in which my father had guaranteed this loan to me, and with this document in the Swiss court, he succeeded to get an attachment.

Q. Did you tell the Swiss lawyer—what is the name of the Swiss lawyer, please? A. I don't recall his name.

Q. Did you tell him your father had given you the 600 Opel shares in lieu of this transaction? A. There were two different things. This was a loan, a one-year loan. That had nothing to do with the gift.

Q. Now, what did you intend to do with your father's 3,800,000 francs, if you succeeded in attaching it and getting it away from the bank? A. At the time I attached it, as I told before, that was just a delaying action. I had no intention of using or keeping it.

Q. Wasn't it your intention to endeavor to make the loan to Uebersee and then to hold the funds as your father's agent? A. I could not do that, Mr. Burling,
809 as is clearly stated in the paper, the loan was only good for a year, so that would be really a very short time to go through any troubles of this sort.

Q. Will you examine Defendant's Exhibit 4 and see if it refreshes your recollection as to the name of the lawyer who represented you in the attachment proceedings? Wasn't it Dr. Meyer? A. Oh, yes; Dr. Meyer.

Q. And he was a director of the Uebersee Finanz-Korporation; is that right? A. At this time, I could not tell you.

Q. At any rate, he was or soon thereafter he became one? A. I met him as a lawyer first, but I didn't know at the time if he was a director of Overseas.

Q. And you actually procured a court order directing the sale of the property attached, did you not? A. Yes.

Q. Why did you not go through with the attachment sale, a sale under the court order? A. As I explained to you, it was only a loan for a year, and I didn't want to put up a fight for any loan which had to be returned after a year, anyhow.

Q. And what finally happened to the money? A. It was finally returned. It had been reported to the
810 German authorities, and I think it was later on, if I am not mistaken, and the last part of it was retained by my father with the permission of the foreign funds control for a year or two more.

Q. But ultimately it all ended, and the Swiss francs ended up by being transferred into marks? A. Into marks, yes; definitely.

Q. Now, is it not a fact that until a few days before this transaction, the transfer of the 600 shares of Opel took place, it was your intention when you finished your apprenticeship with General Motors to return to Germany to live? A. My father always wished me to return to Germany. He had, so to say, a head and a heart, and in his heart he didn't realize the corporation was sold, and he was German, and he still felt identical with the corporation, and he always had a wish that I would return into the management, and it was even possible, if political conditions would have worked out, that the Nazis would not have come to power, that ultimately I might have returned to Germany.

Q. Isn't it a fact that you didn't make up your mind to leave Germany until you learned about the advantages of being a devisen auslander? A. Before I could learn about these advantages, I had already left, Mr. Burling.

Q. You had already left, but did you intend to
811 leave permanently? A. Definitely, as you see, from my what is called abmeldung.

Q. If you left for a year, you would have to fill out an abmeldung? A. No. You need not. Any salesman who leaves Germany and goes to work for a year, he would not report himself out to a foreign country. That is not the normal way of procedure.

Q. Well, at the time you went to General Motors in this country, you didn't intend to stay here with General Motors, did you? A. At this time it was left open. My father wanted me to remain with the corporation and ultimately return to Germany, even after the gift was made, he still had some hopes, and if I remember correctly, he even went to his lawyers and even tried to make an application for me to return to straighten out the tax matters in case I would return, income tax matters and so on, but it was never my intention to return.

He always wished me to return. I must state that.

Q. Will you state why and what factors led you in '29 to make up your mind to leave Germany permanently? A. The most important factor was that I could not go into business in Germany.

Q. Was it that you could not go into business or could not manufacture automobiles or bicycles under the
812 name of Opel? A. Those were the lines I was trained for, and especially I was very much interested in the bicycle business and would have very much liked to have acquired a bicycle factory, and at the time it was impossible.

Q. Did the agreement of '28 forbid you to go into the bicycle business or merely forbid you to use the name Opel? A. To use the name Opel, but the name Opel, and especially Fritz von Opel, was the biggest asset I had at the time.

Q. But you didn't expect to manufacture bicycles under the name of Fritz von Opel outside Germany? A. No.

Q. Was the fact you could not use the name von Opel in the manufacture of those machines; bicycles or automobiles, wasn't that the fact that determined your not re-

turning to Germany in 1929? Isn't that so? A. I stated it is the restrictions which prevented me from using my well-known name in Germany for commercial purposes that made it impossible for me to return to build up a business there.

Q. I don't quite understand why you could not have applied to get a different name, National Bicycle Company, or the Fritz Bicycle Company? A. Because, as I tried to explain, it was the strings of the Opel corporation,
813 with which all we Opels had been permanently with the factory, and it was our luck in competition, that the name was also the name of our product, and it is much easier to launch a publicity campaign and all those things. It is just the same as Henry Ford or some name like General Motors. Everything Mr. Ford did reflects upon the corporation and makes its business immensely more easy.

Q. Well, since you could not use the name Opel outside Germany, I fail to understand, and I ask you to explain, what relevance the fact that you could not use the name Opel in Germany has to your determination in 1929 to abandon your German domicile? A. I tried to explain that to you all the time.

Q. But you could not use the name Opel in manufacturing automobiles anywhere in the world, or sewing machines, or bicycles? A. Yes, in all those fields which interested me most.

Q. Anywhere in the world? A. I think that is what the contract said.

Q. Why did you ever leave Germany because you could not use the name Opel for this business in Germany, if you could not use it anywhere else? A. Because it was in Germany where the name was an asset. It was much less known in any other country.

814 Q. I understand you had lost an asset, but why would you be better off in any other country than Germany, since you would not have the asset anywhere?

A. You have to balance the advantages against the disadvantages.

Q. But what advantages accrued to a national character in Germany, a household name, what advantage accrued in 1929, four years before the Nazis came into power, for you to emigrate? A. Maybe you have never been in the position I have been in. I feel like a crown prince after a revolution.

Q. Like what? A. Like a crown prince. I was considered the crown prince of the enterprise and a revolution had taken place, and all glamour was taken from my shoulders, so to say.

Q. But you still were a well-known athlete, balloonist, and an automobile racer, and so forth? A. Yes.

Mr. Ingoldsby: That is becoming argumentative.

The Court: I think it is.

By Mr. Burling:

Q. When you left Germany to go to the United States, where did you intend to reside permanently? A. At this time, I hadn't made up my mind, Mr. Burling.

Q. It was just your intention not to return to Germany; is that right? A. In general, yes. Of course, there
815 may have been some unforeseen circumstances, which would have permitted me to return, but it certainly wasn't my intention to return into any position inferior to the one I had before.

Q. Are you in possession of any documentary evidence, other than this abmeldung, which indicates an intention never to return to Germany for permanent residence, prior to this date? A. I think the only official document which counts in these matters is the document you referred to. That is the abmeldung.

Q. Since I do not agree with you as to the legal significance of the abmeldung, I ask you: are you in possession of any documentary evidence which indicates that before

this transaction you didn't intend to return to Germany at the end of your General Motors apprenticeship? A. You just have shown me several documents.

Q. What documents, please? A. For instance, the application of my father to the Reichs Bank, where he mentioned of my living abroad.

Q. You were living abroad in the course of your General Motors apprenticeship. I am not talking about that, but I am talking about intending to return ultimately to Germany to live.

Do you have any documentary evidence that sup-
816 ports that? A. I answered you that the only legal documents which is required for the purposes of emigration is the documents I spoke to you about.

Q. And you have no other documentary evidence as showing intent to emigrate permanently? A. No. I really don't know in which occasions I should have made such public statements.

Q. Well, you didn't intend to remain permanently in the United States, did you? A. It depends on about what year you are speaking, Mr. Burling.

Q. The year that you spent here. A. It is the year 1930. The intention of General Motors was—

Q. (Interposing) I am talking about your intention. A. My intention was to stay with General Motors for a while, and that is the reason I took up legal residence in Belgium.

Q. You didn't intend to remain permanently in Antwerp? A. No.

Q. And you didn't have a domicile in Antwerp? A. I had a legal domicile in Antwerp, and I got it with great difficulty.

Q. What did you get in Antwerp? A. I just told you, my legal domicile.

817 Q. Explain what it is. I am at a loss to understand how you did it because it is impossible under any system of law to get legal domicile in any place where

you do not intend to remain. A. You can't take up residence in a country?

Q. Oh, yes. A. As I remember, I had to get permission to do that from the Belgium Government.

Q. But you didn't get a certificate from the Belgian Government that you domiciled in Belgium, did you? A. As long as you are living in a country, you had your legal residence there.

Q. I don't mean to embarrass you. You don't know the difference between domicile and residence. A. I think it is a matter of law and quite complicated, Mr. Burling.

Q. I will pass on then.

Now, did you prepare a memorandum which you handed to the Department of Justice in 1943?

I show you Defendant's Exhibit 43 and ask you if that is not such a memorandum, and I ask you to look at the last page and see if your signature does not appear thereon? A. I think that was the memorandum given to the enemy alien hearing.

Q. And signed by you? A. Signed by me.

818 Q. I want to read you the sentence from page—

Mr. Burling: I offer this in evidence,—

Mr. Ingoldsby: (Interposing) May the record show at the time this was prepared by Mr. von Opel, that he was in an internement camp in the United States?

Mr. Burling: There is no doubt about it. I will stipulate it.

Mr. Gallagher: I would like to request the Government, in pursuance of the instructions of Judge Holtzoff, to tender us the copy of the Alien Enemy Board Hearing, if they have found the copy of the one hearing which is missing.

Mr. Burling: Judge Holtzoff's order was that we turn over the papers we intended to use.

Mr. Gallagher. That is not correct. He said to turn—

The Court: (Interposing) It is getting rather late. Try to get this testimony in.

If you want to make a point of that later, you can do it.

Mr. Gallagher: All right.

Mr. Burling: We cannot do it. We cannot produce what we haven't.

Mr. Gallagher: We have all the other hearings except one.

Do you have the notes of it here?

819 Mr. Burling: I don't know. They may be lost. They may never have been transcribed, but I can say I don't have it, and I don't know where they are. I don't know anything about it.

(Document previously identified as Defendant's Exhibit 43 was received in evidence.)

By Mr. Burling:

Q. Did you say at page 12 of this memorandum: "When I had decided not to return to Germany in 1932, I immediately felt I should change my citizenship"? A. Yes, that is correct.

Q. Was it in 1932 that you made up your mind not to return to Germany? A. That meant the time when I definitely was sure I would never return, yes. It was shortly before this political upheaval began.

Q. Isn't it a fact that what led you to determine never to return to Germany as a resident was that you learned in the summer of '31 that by virtue of the fact you lived outside of Germany for a year and a half you had become a devisen auslander? A. It had a certain bearing on it, definitely. It came with all the other reasons.

Q. But the German foreign exchange regulations were one of the reasons that you made up your mind?

820 A. There were personal reasons; there were political reasons; economic reasons; and it was one of the reasons, yes.

Q. Now, at the time that the British pound went off the gold standard, you were in Antwerp? A. Yes, sir.

Q. And you were told, as you said, that you should see to it that your family didn't get in the same difficulties that the von Sittard family got into due to the devaluation of the pound? A. Yes. Not to consider the family.

Q. And it is your best recollection you telephoned your father and asked him to send you a copy of the escrow agreement? A. It is rather hazy about that, at this time. I asked him in general over the telephone, I think, what agreement there was, and he said, the agreement is in good shape, and you need not worry; and I said: Wouldn't it be better to talk it over with General Motors, and that is the reason we sent this wire of September the 17th, I think, to John Thomas Smith of General Motors.

Q. And thereafter you went to Wiesbaden to carry on the discussion with your father? A. That was, I think, at the end of September, yes; shortly thereafter.

Q. Did you say in words or substance to your
821 father that he could get a bad licking in Germany, and that you and he should find a way to protect, to get financial protection? A. I certainly told him in general the situation in Germany was quite a risky situation, and that I, personally, would not like to have any part in it.

Q. Did you tell him that he should see to it that he had financial protection? A. I suggested to him all the time that he should look out for his financial protection, and through my advice I helped him to consider during those years, and if he would have followed my advice more closely, a much bigger part of his fortune would have been saved.

Q. And you learned shortly before October the 2nd that on October 2nd more stringent foreign funds control regulations were to come into effect, didn't you? A. No, Mr. Burling, you could not state it that way.

You say that before October 2nd I learned that on October 2nd a more restrictive law shall come out.

I am not a mindreader, and I didn't know what the German Legislators were going to do.

Q. Wasn't that decree announced a day or so in advance in the Frankfurt Zeitung? A. As far as I know—I am not a lawyer, but I think, so much I know, that the decree in Germany or law becomes effective on the date of publication.

822 Q. Did you read the Frankfurt Zeitung when you were in Germany? A. We had general discussion—

Q. Was it your custom to read the Frankfurt Zeitung when you were in Germany? A. I read it, certainly. It was the biggest newspaper in Germany.

Mr. Burling: Your Honor, we are missing an exhibit. May I merely note that in the record and come back to it tomorrow?

The Court: Yes.

By Mr. Burling:

Q. At any rate, on the second of October you did drive from Wiesbaden to Mannheim to see Dr. Hachenburg? A. Yes, I did.

Q. And you talked— A. (Interposing) I didn't drive from Wiesbaden to Mannheim. It might have been from Ruesselsheim.

Q. Anyway, you went to Mannheim? A. Yes.

Q. And you had a fairly long talk with Dr. Hachenburg at that time? A. Yes; if I remember correctly, several hours.

Q. What did you say to him that you and your father wished at that time with relation to a usufruct?

823 A. I conveyed to him all the thoughts and wishes and ideas of my father.

Q. Will you tell us just what words you used? What did you say to Dr. Hachenburg? A. I didn't—my father is no lawyer and I am not any lawyer, and I didn't say to him any legal phraseology. I just stated the thing, the principles to him, the two principles being that my sister should not be put at a disadvantage, and that in case of

my death without heirs, this gift should fall back into the family.

Q. Did you say anything to him in words or substance which indicated that you and your father did not intend that a usufruct should arise as that term is normally known in the German law upon delivery of a niessbrauch? A. I am not aware of the fact that I at this time used the word niessbrauch, and it is very definite that I don't know all the legal fineries of the word.

It took me about ten years to learn about it, approximately.

At this time my father merely stated and said what I conveyed to Dr. Hachenburg. He said I should not have all the income, but said I should account for about 75 percent, which was later changed to 80 percent, with my sister.

Q. You heard Dr. Kornstein testify here the day before yesterday and yesterday, did you not? A. Yes, I did.

824 Q. And you heard him testify about three complicated possibilities as to the intention of the parties to the gift agreement, did you not? A. Yes.

Q. Did you say to Dr. Hachenburg that you and your father intended an agreement along any one of the three lines suggested by Dr. Kornstein? A. I did not suggest any legal terms to him. I just gave him and repeated my father's thoughts, and I can even remember the words I used.

Q. What were those, please? A. My father at the time had quite a considerable income, and certainly there was no reason for him to have collected any additional income because it would have gone to taxation, 80 or 90 percent of it, and it was rather high at the time, and there was no use for him to get additional paper marks.

From the property he had then, without income, he could live for about 200 or 250 years, and it was all the money he personally needed, and my father made it known to me and I conveyed the same idea to Hachenburg. He

said it was never his intention to draw anything, and it was for this reason Dr. Hachenburg in his letter of October the 3rd goes into the question of what he called thesaurierung, the acquisition of capital provision for the undrawn part.

825 And I also repeated what in effect my father wanted, not in legal language, and, for example, my father, the words my father told me, he said: In Paris you find the doorman in front of your door which ten or fifteen years before is a rich prince, and now, all of a sudden, these princes are waiters or taxi drivers, or doormen, and my father wasn't sure what was going to happen in Germany, and so he told me if the day should arrive where he had to flee Germany, and where I might arrive in a foreign country, maybe with nothing in my hand but a paper bag, I then want some legal hold on income, and you at the time might be dead, and I might have to fight it out with your family and so even if you are alive I want some legal strings, and if I have to appear as a beggar and ask you for money, I want some legal strings so that I can legally obtain what is due to me, and these words I explained to Dr. Hachenburg, and he put them into legal language, and the result is this gift agreement.

Q. Did Dr. Hachenburg say anything to you about a niessbrauch or a usufruct? A. He explained to me the meaning of it, or tried to explain it to me.

He told me, he said it was a little involved term, but that in simple language it meant that I should set up a corporation, that all the assets should go into the corporation, and that if my father so desired, he could get

826 some income.

Q. In other words, your father could draw income by permitting it to accumulate in the corporation at his option, is that right? A. That is not quite correct because I was to run the corporation, and the gift contract didn't provide for any limitation of my activities. There is not one word.

Q. I am talking about what Dr. Hachenburg said to you.

He didn't explain about rights in personam or rights in rem? A. He gave me a general outline.

Q. Did you know what those terms meant on October the 2nd of 1931? A. I think only in a very vague way.

I think that I always understood that niessbrauch in the strict legal sense means a right in rem, and I also know that I discussed it with Dr. Hachenburg, and he said to establish a right in rem on securities and to deal in the securities in a foreign country makes such an obligation and makes administration and investment policy so difficult, that certainly, he said, it would be the last thing that he would recommend.

Q. Now, Dr. Hachenburg said to you that this was a very involved matter? A. As all lawyers are inclined, he told me, he said, he would have to think it over and make up his mind, and he even said that he wanted
827 more time, and so you find on the first page of the letter, he said he regretted very much that he could not draw a more elaborate letter.

Q. Did he not say, and I show you Plaintiff's Exhibit 7, in the fourth sentence:

"I am sorry that I didn't have more time at my disposal for study of the rather complicated matter"? A. Yes; that is what he said, but I told him we are in a hurry to act, and he realized this fact and so he got to work the same night and the next morning, and made this draft.

Under normal circumstances, he would not have done it, but he was our family lawyer for 30 or more years, and he did us a favor to hurry a little bit.

Q. Well, you understood that he mailed you a draft on the 3rd which was received on the 5th; is that right? A. The letter itself; yes.

Q. And the letter enclosed a draft? A. That was a draft; yes.

Q. Now, did he not state in the letter—I withdraw that question.

Will you state when you saw Plaintiff's Exhibit 10 for the first time? A. This letter, I think I saw it, if at all, after my return in November.

828 Q. Will you look at page 4 of the letter and state whether or not it is not a fact that you and Hachenburg on Friday agreed that there should be a meeting next week between your father and Hachenburg to talk over some complexities of the matter? A. That is what he suggested. That is correct, and that is what my father rejected, and he, in fact, asked me to pay for the entire consultation with Hachenburg.

Let me express it this way: he disliked lawyers and all these complicated matters, and he was a go-getter and he wanted action, and when he read the statement he thought it is just another device to make another couple thousand marks.

Q. Did you tell your father on October 2nd, when you went back to Wiesbaden that Dr. Hachenburg wanted to have a meeting with him and talk over the matter? A. Yes, to my father.

Q. You did tell him? A. It was Hachenburg's suggestion, but I thought it wasn't necessary.

Q. A man you knew to be one of the great lawyers of Germany said he wanted to have a further conference, but you made up your mind it wasn't necessary; is that what you say? A. Yes. Even great lawyers are inclined to proceed to complicate matters some time, more than absolutely necessary, and my father was perfectly satisfied

solutely necessary, and my father was perfectly

829 satisfied with those, what is called fundamental considerations.

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RUDOLF DEKU, called as a witness on behalf of the defendant, and being first duly sworn as noted above, was examined and testified through the interpreter, Mr.
834 Joseph Laufer, as follows:

Direct Examination

By Mr. Baum:

Q. What is your full name, Mr. Deku? A. Rudolph Deku.

Q. And where do you reside? A. I live in Aachen.

Q. Is that in Germany? A. That is in the Rhineland.

Q. What is your occupation, Mr. Deku? A. I am chief county officer of the County of Aachen.

Q. Are you appointed to that position? A. No; I have been elected by the County Council.

Q. And how are the members of the County Council chosen? A. The County Council is elected by popular election.

Q. Approximately how many people live in the County of Aachen, Mr. Deku? A. The County of Aachen has a population of about 220,000.

Q. And what zone of military occupation is the County of Aachen located in? A. Aachen is situated in the British Zone of military occupation.

Q. Are you an attorney, Mr. Deku? A. No, I
835 am not.

Q. Have you ever studied law? A. Yes, I studied law. I took my first State Bar examination and I also obtained a Doctor's degree in law.

Q. Where did you obtain that Doctor's degree? A. The University of Cologne.

Q. Prior to the position which you now hold, did you ever previously hold any government position in Germany? A. Yes; I was from 1923 to 1933 as City Counsel in the City of Krefeld, and from 1946 to 1947 I was a County Chairman in Bavaria.

Mr. Gallagher: What was that position from 1928 to 1933?

The Witness: As City Corporation Counsel in the City of Krefeld.

Mr. Gallagher: Will you spell that, please?

The Witness: K-r-e-f-e-l-d.

By Mr. Baum:

Q. Approximately how many people lived in Krefeld during the time you held that position there? A. At that time Krefeld had about 150,000 inhabitants.

Q. What happened, in 1933 with respect to your position in Krefeld? A. I was discharged from my position in 1933, after the seizure of power by the National Socialists, because of my opposition to them.

836 Q. Then following that discharge did you obtain a position elsewhere? A. No, I didn't succeed. I tried it but it proved impossible.

Q. Well, what did you do after you were discharged in 1933? A. I tried to find another position.

Q. Well, did you remain unemployed? A. Finally my brother heard about this and suggested to me to come to Berlin and join his business there.

Mr. Gallagher: Will you identify the brother's name, Mr. Baum?

Mr. Baum: Yes.

By Mr. Baum:

Q. What is your brother's name? A. Erich Deku.

Q. And what was the date or the approximate date when you went to Berlin as you have described? A. I came to Berlin in the spring of 1934.

Q. And for whom did you work in Berlin? A. I worked in the office of my brother, where the Company for Industrial Counsel and Trade and the Union Bank were.

Q. Well, for which company did you work?—the
837 Union Bank or the Company for Commerce and Trade? A. I mainly worked for that company.

Q. Did you also do any work for the bank? A. From time to time I transmitted orders of my brother.

Q. Was the Union Bank a Berlin bank? A. The Union Bank was a branch of the Union Bank of Darmstadt.

Q. Was the Union Bank a large bank in Germany? A. It wasn't a great bank.

Q. And what did the Berlin branch of that bank do? A. The Berlin branch was mainly engaged in stock exchange transactions.

Q. Where is the stock exchange located in Germany? A. The stock exchange is in Berlin.

Q. Can you tell us approximately how many employees were in the Berlin office of the bank in Berlin while you were there? A. At that time there were about five to seven employees there.

Q. Did the company for which you worked have the same office as the Berlin branch of the Union Bank? A. Yes; that was all on the same premises.

Q. When you came to work in the Union Bank in Berlin, was a Mr. Daniel Gross employed at the bank? A Yes.

838 Q. What was his employment there? A. He was counsel for my brother.

Q. Did he have his office in the offices of the bank? A. Yes. My brother had made available to him office space, personnel and everything else that was necessary for the conduct of a practice.

Q. While you were at the bank in Berlin, Mr. Deku, did you ever have occasion to meet Mr. Wilhelm von Opel? A. Yes.

Q. How did you meet Mr. Wilhelm von Opel? A. My brother introduced me to him when he was present there.

Q. Can you remember approximately when you met him for the first time? A. That was in the spring of 1934.

Q. Did you meet him at the bank more than once? A. Yes; I saw him there now and then.

Mr. Baum: If Your Honor please, I would like to make a statement at this time. The next few questions which I will ask this witness, I am asking only for the purpose of impeaching the witness Gross who will testify for the plaintiff later on. This is somewhat irregular, since this witness is out of turn. But I am offering this for no other purpose, in view of the stipulation we entered into yesterday concerning the proceeding in Germany.

839 Mr. Ingoldsby: That is all right. Let us hear the question.

By Mr. Baum:

Q. Mr. Dekt, did you ever have a conversation with Wilhelm von Opel in which the name Daniel Gross was mentioned? A. Yes, such a conversation did take place.

Q. Will you tell us how this conversation came about?

Mr. Ingoldsby: Just a minute. I object if this witness intends to go into an explanation of what his conversation was about a third party, about some other party, and what Wilhelm von Opel said about Dr. Gross.

The Court: I will have to take the testimony subject to motion to strike later. I cannot tell the connection at this time.

(The question having been read by the reporter:)

The Witness: I was with my brother in one of the office rooms, and Mr. von Opel entered.

Mr. Ingoldsby (to the witness making a further untranslated statement): Just a minute; there is no question pending.

By Mr. Baum:

Q. By the way, Mr. Deku, do you see Mr. Daniel Gross sitting in the courtroom today? If so, will you point him out for the Court? A. Yes, he is sitting over there.

840 Q. Will you tell us in words or substance what you recall of this conversation with Wilhelm von Opel to which I have referred?

Mr. Ingoldsby: If we are going into a conversation, I think we might find out at least the year it took place.

The Court: The time and place and circumstances may be necessary.

By Mr. Baum:

Q. When, approximately, was this conversation with Wilhelm von Opel to which you are referring? A. It took place in the spring of 1934.

Q. And will you now tell us in words or substance what you remember of that conversation?

Mr. Ingoldsby: Just a moment, please.

The Court: You had better fix the place.

Mr. Baum: He said, Your Honor, in the bank.

The Court: And who was present?

Mr. Baum: His brother and Wilhelm von Opel were present. I believe that is in the record.

The Court: All right.

(The pending question having been read by the reporter:)

The Witness: Wilhelm von Opel stated that he was about to be punished on the ground he had taken assets outside of Germany in violation of the German Foreign

Exchange Control regulations.

841 He requested my brother to be of assistance to him before the authorities concerned, and to intervene in his behalf.

My brother agreed and suggested to send Mr. Daniel Gross to Switzerland to see Fritz von Opel there and to discuss the matter with him.

By Mr. Baum:

Q. Thereafter did you have occasion to have a conversation with Daniel Gross concerning this matter? A. Yes.

Q. When did this conversation take place, and where? A. This conversation took place when Daniel Gross returned from his trip to Fritz von Opel and reported on the matter in the offices.

Q. Who was present at this conversation? A. My brother, Gross, and I.

Q. And will you please tell us in words or substance what you recall of that conversation?

Mr. Ingoldsby: I object to that. This, I submit, Your Honor, is even worse hearsay than the hearsay to which I have heretofore objected, because in this instance even Wilhelm von Opel is not present.

The Court: As I understand, this is offered to contradict a statement that is anticipated.

Mr. Baum: That is correct, Your Honor.

The Court: Now, if he doesn't make it, it won't

842 become material. I will rule on it later on.

Mr. Ingoldsby: Very well, sir.

Mr. Baum: Will you please translate the question to the witness?

(The pending question having been read by the reporter, as follows:)

"Question: And will you please tell us in words or substance what you recall of that conversation?"

The Witness: Mr. Gross was evidently dissatisfied with the results of his conversation with Fritz von Opel.

And he stated that in his opinion it would be difficult for Wilhelm von Opel to prove to the German authorities the bona fide character of the agreement which he had concluded.

Mr. Baum: Your Honor, I now conclude the series of questions which are offered for impeachment. The balance are offered for whatever purpose they may serve.

Mr. Ingoldsby: May I have the last part of that statement?—Gross was quoted as saying—

The Reporter (reading): "That in his opinion it would be difficult for Wilhelm von Opel to prove to the German authorities the bona fide character of the agreement which he had concluded."

Mr. Ingoldsby: All right.

By Mr. Baum:

Q. Mr. Deku, did you ever have dinner with Wil-
843 helm von Opel? A. Yes, once.

Q. And when was that? A. This was in the summer of 1934.

Q. Where did you have dinner with Wilhelm von Opel? A. The dinner took place at the Newa Grill in Berlin.

Q. Were you alone with Wilhelm von Opel? A. No; there was present Major von Mudra, Com. von Schwerin, and my brother.

Q. What kind of a restaurant was the Newa Grill? A. It was a very good restaurant.

Q. What do you mean by the expression "very good restaurant"? A. Well, it was the kind of a restaurant which could be frequented only by people who had money.

Q. Did you ever have a meal at the Newa Grill on any other occasion? A. No.

Q. Did you pay for your meal on this occasion? A. No; I was invited.

Q. By whom? A. By Wilhelm von Opel.

Q. Did you have your dinner in the public dining room or in a private room? A. We didn't sit in the midst
844 of the crowd. It was a semi-detached room—semi-private room.

Q. Now, Mr. Deku, will you please tell us in words or substance what you recall was said by Mr. Wilhelm von Opel during the course of this dinner? A. As a result of my questions, and as a result of the questions of the others, the discussion arose over the payment of a fine of three and a half million marks by Wilhelm von Opel.

We were astonished that he had submitted to such a severe fine, without fighting through a regular procedure.

And we asked him how it came about, how he happened to do that.

He stated that it was well worth three and a half million marks to have his assets outside of the German locked safe.

Q. Did he explain what he meant by the expression "German locked safe"? A. That wasn't necessary. We all understood that.

Q. Did the conversation during this dinner deal entirely with this fine you have referred to, or did it cover other matters? A. Of course, we talked about many other things. We talked about polities, and jokes were told.

Q. Did Mr. Wilhelm von Opel ever say during the course of this dinner—

Mr. Ingoldsby: Just a minute. I object. Does he
845 want to quote the conversation to his own witness?

The Court (To Mr. Baum): You can mention the subject.

By Mr. Baum:

Q. Did Mr. Wilhelm von Opel say anything about Nazi pressure during this conversation? A. He didn't talk about that.

Q. Did he refer to the German authorities at all? A. Yes, he did mention them. He poked fun at the German authorities, because they could be so easily deceived.

Q. Was Mr. Wilhelm von Opel in a cheerful mood or in a sad mood during this dinner? A. He was in excellent spirits.

Q. During the course of this conversation, did he refer to a gift to his son Fritz von Opel? A. No.

Q. While you were employed in the office in Berlin, did you ever have occasion to meet Mr. Fritz von Opel? A. Yes.

Q. Do you see Mr. Fritz von Opel in the courtroom today? A. Yes, he is sitting right here.

Q. Did you see Mr. Fritz von Opel in Berlin once or more than once? A. I saw him several times.

Q. Did you ever have any business discussions
846 with him? A. Yes, I did have business discussions with him.

Q. What was the approximate date of these discussions? A. This was in the year 1936, several months before the collapse of the bank.

Q. And when did the bank collapse? A. In the summer of 1936.

Q. What was the subject of these business discussions with Mr. Fritz von Opel? A. The problem involved was the purchase of bauxite mines in Hungary.

The intention was, which was partly realized, to establish there a corporation.

The intention was to have as partners in this enterprise my brother, Mr. Fritz von Opel, and a Mr. Fayer in Budapest.

I was supposed to become the manager of this enterprise.

And I had already received a formal appointment to this position.

Q. Do you remember the name of this company you have referred to? A. There were several names, but later the name of Transdanubia was mentioned.

Q. Do you know whether that corporation was actually formed? A. Yes; articles of incorporation were drawn up.

Q. And where was this corporation incorporated?

847 A. It was established in Berlin.

Q. Under the laws of Germany? A. Under German law.

Q. Did you ever have occasion to make a trip to Budapest? A. Yes; I was there several times.

Q. Was any of those trips in connection with this company you have referred to? A. Yes, I was supposed to make arrangements there for the establishment of an office.

Q. Can you tell us approximately when that trip took place? A. This was a few weeks prior to the collapse of the bank.

Q. I believe you testified that the bank, referring to the Union Bank, failed in the summer of 1936. Is that correct? A. Yes.

Q. And what did you do then? A. I was unemployed and I tried to obtain a job elsewhere.

Q. Since the time you left the Union Bank in Berlin, have you ever seen Wilhelm von Opel again? A. No.

Q. From the time you left the bank, until you

848 came into this courtroom, have you ever seen Fritz von Opel again? A. I saw him yesterday for the first time here.

Q. And from the time you left the bank in Berlin until you came into this courtroom, have you ever seen Mr. Daniel Gross? A. Yes; I saw him once when he was a witness in a proceeding.

Q. How did you come to be in that proceeding? A. I was indicted for the reason that I had advised somebody to enter into a stock exchange transaction with the bank, although I was supposed to have known that the bank was about to collapse.

Q. And will you please tell us what was the final result of that proceeding? A. I was acquitted.

Mr. Baum: That is all.

Cross Examination

By Mr. Ingoldsby:

Q. Mr. Deku, do you speak any English at all? A. I speak very little English.

Mr. Ingoldsby: Let me talk to him just a minute.

(To the witness directly): Can you understand my questions? Will you answer me in English, please?

The Witness (speaking in English): I have understood what you have said.

849 Mr. Ingoldsby (to the witness directly): You do understand what I said?

The Witness (himself in English): Not all what you have said.

Mr. Ingoldsby (to the witness directly): Do you understand what I just said?

The Witness (himself in English): Yes.

Mr. Ingoldsby (to the witness directly): Will you answer this question in English:

Are you the brother of Erich Deku?

The Witness (himself in English): I am.

Mr. Ingoldsby (to the witness directly): And is your brother Erich the same man who in 1936 was sentenced to a term of imprisonment in Germany for three years and three months at hard labor in connection with the bank failure?

(The witness having spoken in German:)

Mr. Ingoldsby (to the witness directly): Do you understand the question I just asked you?

The Witness (himself in English): No.

Mr. Ingoldsby (to the witness directly): You do not?

The Witness (himself in English): No.

Mr. Ingoldsby: All right; we will go into the German.

By Mr. Ingoldsby:

Q. Will you ask the witness, please, Mr. Laufer, if he is the brother of Erich Deku, who in 1936 was sen-
850 tenced to serve a term of imprisonment at hard labor for three years and three months for grand larceny from his brother's bank? A. Yes.

Q. Now will you ask him, in connection with that imprisonment, wasn't his brother charged with stealing about five million reichsmarks from Wilhelm von Opel? A. I don't know. I don't know the indictment.

Q. Ask him if he knows the reason why his brother was imprisoned. A. Fritz von Opel told me on the day of the collapse of the bank that my brother had committed embezzlement on the largest extent.

Q. All right. We will come back to that in a mirute. How long have you been in the United States. A. I arrived here on November 28.

Q. And did the Government pay your transportation? A. Yes.

Q. And they are paying your return transportation, are they not? A. I hope so.

Q. How much have you been paid per day since November 28th? A. I am supposed to receive $15 per day.

Q. Do you have any other financial arrangements with the Government? A. No, I do not.

851 Q. Will you ask the witness how old he is at the present time? A. I am now 52 years of age.

Q. Now, Mr. Deku, isn't it a fact that you first became acquainted with Wilhelm von Opel in the year 1932? A. No.

Q. I want to ask you about the first quotation which you attributed to Wilhelm von Opel. A. Yes.

Q. When did that conversation first take place? A. In the spring of 1934.

Q. Can you place that conversation any more definitely, from the standpoint of time? A. No.

Q. You do not know what month? A. No.

Q. And where did this conversation take place? A. It took place in the offices of the Union Bank in Berlin.

Q. And who was present? A. My brother and Wilhelm von Opel.

Q. So your brother heard the same conversation which you have just repeated? Is that correct? A. Yes.

852 Q. Is he here? A. No.

Q. Where is he? A. He is in Germany.

Q. When did you last see your brother? A. I saw him shortly before my departure.

Q. Do you see him frequently? A. No; I haven't seen him for ten years.

Q. How did you happen to see him on the occasion just before you left? A. He was called for to attend an interrogation at the Department of Justice in Frankfurt.

Q. And how did you happen to be there? A. I happened to be there because I got the documents for the trip to America there.

Q. And it was just a matter of chance, was it, that your brother happened to be there the same day? A. No. I had been requested, since I went to Frankfurt by way of Cologne, to bring him along.

Q. And is it your testimony that that is the first time that you have seen your brother in ten years? A. I didn't see him for ten years, and I saw him again for the first time this year.

Q. Do you communicate with your brother by mail? A. He has written me a letter through my daughter.

853 Q. Just one letter? A. Yes.

Q. Only one letter in ten years? A. He did not write me during the ten years.

Q. Now Mr. Deku, am I correct in quoting you when I say that you attributed the following statement to Wilhelm von Opel—

In the spring of 1934 he said that he was about to be punished because he had taken funds outside of Germany?

Is that correct?

Mr. Burling: I object to the question, Your Honor. In the first place, the record speaks for itself as to what the witness said. In the second place, the question is not in accord with our recollection of the testimony of the witness.

The Court: He has a right to check him on cross. I will permit it.

(The pending question having been read by the reporter:)

The Witness: Yes, that was the substance of his statement.

Mr. Burling: If your Honor please, I agree that ordinarily a witness may be checked on cross. But where the witness is being examined through an interpreter, and where the difference is one of fine shadings and meanings of words, I submit the objection is appropriate. That
854 is to say, I suppose Mr. Ingoldsby is endeavoring to bring out the fact that Wilhelm said he had taken funds outside of Germany, rather than transferred, which is what the witness first said.

The Court: I suppose you can straighten that out on redirect.

Mr. Ingoldsby: I am only endeavoring to bring out the answer of the witness is pretty pat and can't stand much cross-examination.

The Court: It can be brought out in redirect.

By Mr. Ingoldsby:

Q. Now, did Mr. Wilhelm von Opel make any further statement by this time—and "by the this time" I mean the spring of 1934—regarding what he meant by taking funds outside of Germany? A. I do not recall the details.

Q. So you don't know what Mr. von Opel was talking about when he said that he expected to be punished because he had taken funds outside of Germany, did you? A. I knew that the proceeds from the sale of shares to General Motors, of General Motors, were involved.

Q. How did you know that? A. That was mentioned on that occasion.

Q. At the time of the conversation, in the spring of 1934, were the General Motors shares mentioned? A. I think they were mentioned.

855 Q. Just two questions ago didn't you tell us that there was no conversation further than what you had indicated? A. I said that I did not remember all the details.

Q. Well, now, I want to ask you if you remember any additional details to the details which you have already told us? A. No, I do not recall any further details.

Q. Did Mr. von Opel make the statement, to which you have just testified, in a loud voice or was he telling this as a secret? A. No; he was rather excited.

Q. Now, Mr. Deku, your brother Erich was president and owner of the Union Bank of Berlin and Darmstadt, was he not? A. Yes.

Q. And you were employed in the Berlin branch of that bank, were you not? A. No; I was an employee of the company.

Q. What company? A. The Company for Trade and Industrial Counseling.

Q. Was that company a part of your brother's bank? A.

It was a limited corporation which was owned by my brother.

Q. And what was the nature of the business of that
856 corporation? A. This company attempted to engage in import and export business and to establish itself in the sale of automats.

Q. You also worked for the bank, didn't you? A. Only on occasion.

Q. You did rather odd jobs for the bank, didn't you? A. Yes.

Q. What salary were you being paid at that time? A. I was paid 400 marks a month.

Q. That is about $100 a month, is it not? A. Not quite.

Q. Not quite $100 a month? A. It is about $130.

Q. About $130. So you were just a clerk in the bank, were you not? A. I wasn't in the bank.

Q. All right. I won't labor that point.

Now, before you came to Berlin to work for your brother, you lived in the Rhineland, didn't you? A. Yes.

Q. And after you went to work for your brother in Berlin, did you move your family to Berlin? A. Yes.

Q. How much of a family did you have at that time? A. I had a wife and three children.

857 Q. And you felt that this position with your brother was reasonably secure, did you not? A. I was glad I had that position.

Q. And you expected that position to continue, did you not? A. I would have preferred to have another job.

Q. Well, you didn't expect to lose that one, did you? A. I have tried to get another job.

Q. All right. Now, Mr. Deku, the way you left that job was that the bank went broke and all the employees got fired, did they? A. No. I left the bank on the same day when I heard that these charges were being made against my brother.

Q. Was Wilhelm von Opel a client of your brother's bank? A. Yes.

Q. And he was considered by your brother a very substantial client, was he not? A. Yes.

Q. And as a result of having Wilhelm von Opel as a client, the bank was able to attract other large clients, was it not? A. I do not know the internal connections.

Q. From 1932 until the latter part of 1935, your brother and Wilhelm von Opel were quite friendly were they
858 not? A. Yes; that was the appearance.

Q. And the only way that you ever got to see Wilhelm von Opel was because you happened to be along with your brother? Is that correct? A. Yes.

Q. Now, things were going pretty well at the bank around the 1935 period, were they not? A. So far as I could judge it, yes.

Q. Now, in 1936 the bank failed, didn't it? A. Yes.

Q. And in the spring of 1936 your brother was sent to the penitentiary, wasn't he? A. In the spring? I think it was in the fall.

Q. Well, all right; possibly he was convicted in the spring and sentenced in the fall; but we won't labor that.

In any event, between the spring and the fall of 1936, your brother went to the penitentiary, didn't he? A. In the summer of 1936.

Q. And he was sentenced to serve three years and three months at hard labor, was he not? A. Yes; I read about it in the papers.

Q. That was a very sensational case in Berlin, was it not? A. I was no longer in Berlin at that time.

859 Q. Do you know whether or not this was a sensational case in Berlin, whether you were there or not? A. I must assume that, because it was printed in the newspapers.

Q. And it was given widespread publicity in the newspapers, wasn't it? A. I did not read the Berlin papers.

In the newspapers of the Rhineland, it wasn't unusually big.

Q. What wasn't unusually big? A. The treatment of this lawsuit in the newspapers.

Q. I show you a newspaper dated April 10, 1937.

Mr. Burling: I object, unless the newspaper is identified.

Mr. Ingoldsby: I don't propose to offer them in evidence.

Mr. Burling: I still object, unless the newspaper is identified.

The Court: Well, unless he knows something about the newspaper, too.

Mr. Ingoldsby: In fact, I don't think I will use the newspapers at all.

By Mr. Ingoldsby:

Q. You know, do you not, that the man who swore out the warrant of arrest against your brother was Fritz von Opel, right here, wasn't he? A. I do not know that.

860 Q. You do not know that? A. No, I did not know that.

Q. Well, do you know that Fritz von Opel was the principal witness against your brother? A. No, I do not know anything about the lawsuit—the proceeding.

(Thereupon a short recess was had. The following then occurred:)

861 By Mr. Ingoldsby:

Q. Mr. Deku, we were just talking about the trial of your brother. It is your testimony that you did not know that Fritz von Opel swore out the warrant of arrest against your brother? A. I do know that a warrant

was taken out against my brother, but who made an oath in connection with it I do not know.

Q. And it is your further testimony that you do not know that Fritz von Opel was the principal witness against your brother at the time of his trial? A. No, I do not know that. I had so many troubles of my own that I did not, I was not concerned with the proceedings against my brother.

Q. You were not concerned with the troubles of your brother? A. No.

Q. And did you know that your brother took an appeal from his conviction? A. I do not know that.

Q. And you do not know that the Supreme Court of Germany sustained your brother's conviction and he was forced to serve his sentence? A. I do not know that my brother spent in jail during that period—spent time in jail during that period.

862. Q. And it is your further testimony that you read nothing about this case while it was going on in the newspapers?

Mr. Burling: I object, Your Honor, that is not the witness' testimony.

The Court: Ask him if it is his testimony.

By Mr. Ingoldsby:

Q. Is it your testimony that you did not read about this case in the newspapers? A. No, I didn't say that.

Q. What did you say? A. I said that all that I do know about the trial I know from the newspapers.

Q. Did you ever discuss your brother's troubles with him after he was released from prison? A. I have seen him again for the first time in 1948 and the matter had gone by for such a long period of time that it was no longer of interest to talk about it.

Q. So your testimony is that you never saw your brother from 1936 until 1948. A. No, I said that I didn't see him for ten years. I visited him once in Butzbach. That is the penitentiary.

Q. When was that that you visited him in the penitentiary? A. That must have been some time in 1937 or 1938.

Q. And on the occasion of your visit to the penitentiary to visit your brother, you did not discuss the reason why he was in the penitentiary, is that your testimony? A. I called on him in order to discuss with him matters which concerned his family.

Q. Would it be a correct statement to say that Wilhelm von Opel, the main client of the bank, lost between five and six million reichsmarks as a result of your brother's manipulations? A. I do not know that.

Mr. Ingoldsby: Mark that plaintiff's exhibit whatever the next number is for identification, (handing document to clerk).

(Accordingly, the document referred to, a copy of a newspaper clipping, was marked Plaintiff's Exhibit 82 for identification.)

Mr. Ingoldsby: Will you show him that, please.

Mr. Burling: Just a moment, Mr. Laufer, will you show it to us first, please.

Mr. Ingoldsby: In order that you do not have to read all that, I will state my next question now.

By Mr. Ingoldsby:

Q. If I show you a newspaper clipping which states that the damage to the main client is 6.8 million reichsmarks,

would that refresh your recollection as to what loss
864 Wilhelm von Opel suffered. (Plaintiff's Exhibit 82 for identification was handed to the Witness.) A. At that time so many figures were mentioned that I do not recall—that I do not know how big, actually, the damages of Mr. Wilhelm von Opel were.

Q. Mr. Deku, I want to take you back for a moment to the dinner which I believe you said you attended with Wilhelm von Opel. Will you again state the date of that dinner. A. It was in the summer of 1934.

Q. And will you again state who was present at that dinner? A. Major von Mudra, Count von Schwerin, and my brother.

Q. Your brother was there? A. Yes.

Q. You failed to mention the presence of your brother when you were testifying on direct examination, did you not?

Mr. Burling: I object to that on the ground that it is a direct misstatement of the testimony. The witness did mention that his brother was there.

The Court: You may ask him if he mentioned it, to the best of his recollection. He objects to your making an assertion; you will have to ask it in the form of a question.

Mr. Ingoldsby: I did not understand Your Honor's ruling. I will put it this way.

By Mr. Ingoldsby:

865 Q. In your direct examination did you or did you not mention that your brother was present at that dinner? A. I think I stated that he was present.

Q. Are those the only people who were there? A. I think so, yes.

Q. Is it not a fact that Dr. Gros was present at that dinner? A. No, Dr. Gross was not present there.

Q. Are you absolutely certain about that? A. Yes.

Q. If I told you that your brother reported to the German authorities after he was in prison that Dr. Gros was present at that dinner, would that refresh your recollection? A. Then I must say that my brother was in error. My brother had dinner on many occasions with Mr. Wilhelm von Opel, and I had only one.

Q. That dinner, again, was in the summer of 1934? A. Yes.

Q. And yet today, in 1948, you are absolutely positive about who was present at that dinner? A. I am certain about the fact that Dr. Gros was not present there.

Q. Will you state again the statement which you attribute to Wilhelm von Opel at the time of that dinner? A.

866 He said that upon the question how it happened that he was willing to pay such a substantial fine, he stated that it was well worth to him to pay that in order to have assets outside of the German locked safe.

Q. Did he say anything else? A. He also poked fun at the German authorities which could be taken in so easily.

Q. Did he say anything else? A. He talked a lot, but I do not recall.

Q. The only portions of the conversation through the entire dinner that you remember are the conversations which you have just stated, is that correct? A. Yes, because that was the most striking thing for me.

Q. And do you recall that he used the words that he wanted to have his money outside of the German locked safe? A. Yes, this pregnant expression struck my attention.

Q. And did you know what he was talking about? A. Yes.

Q. What was he talking about? A. He talked about the payment of the fine and the transfer of the money abroad.

Q. When you say transfer of money abroad, what money are you talking about? A. What I am referring to is the proceeds from the sale of the Opel Works.

867 Q. And is that what Mr. von Opel was referring to? A. Yes, to my recollection.

Q. How do you know that? A. That is what I remember.

Q. Do you now remember that Mr. von Opel at that dinner said something about the proceeds from the Opel sale? A. I do not believe that a detailed discussion was had about that.

Q. I am not asking if there was a detailed discussion, I am asking if there was any mention of the Opel proceeds. A. I believe it was mentioned.

Q. Are you sure that it was mentioned? A. I must conclude from the context that it was mentioned.

Q. You will agree that if it was not mentioned, then the conversation did not make any sense at all, did it? A. That is why I said that I believe that I am convinced that it was mentioned.

Q. Was your deposition taken in Germany while Wilhelm von Opel was still alive? A. I was questioned for the first time about two or three months ago.

Q. When did you first go to the American authorities in connection with this case? A. I did not call upon
868 the American authorithies. The American authorities called on me.

Q. Did anyone tell you to say that? A. No.

Q. Do you know how they happened to call upon you? A. No, I do not know.

Q. Where is Count von Schwerin at the present time? A. I do not know.

Q. When was the last time you saw him? A. I do not remember exactly. It may have been 1936 or 1937. I think it was in 1937.

Q. What is the name of the other individual whom you said was at this dinner? A. Major von Mudra, M-U-D-R-A.

Q. And when was the last time you saw him? A. I saw him for the last time in 1941 or 1942.

Q. And to your knowledge, neither of these individuals are in the United States now, is that correct? A. I do not know that.

Q. When you talked to the American authorities about two months ago did you mention the name of your brother, Erik Deku? A. The American authorities have mentioned the name of my brother.

Q. The mentioned your brother's name to you, 869 not you to them? A. Yes.

Mr. Ingoldsby: Will you mark this Plaintiff's Exhibit the next number (handing document to the Clerk).

(Accordingly, the document referred to was marked Plaintiff's Exhibit 83 for identification.)

Mr. Ingoldsby: Strike that number, will you please, I don't think I want to use that.

(Accordingly, Plaintiff's Exhibit 83 for identification was withdrawn.)

By Mr. Ingoldsby:

Q. When you talked to your brother just before you came here to the United States, did your brother tell you about any communications which he has had with the Opel family? A. He only mentioned to me that a few days before Dr. Gros had addressed a letter to him requesting him to pay his old debts.

Q. I am going to read you something and ask you if this refreshes your recollection about who was present at the dinner.

* * * * *

870 Q. I wanted to ask you one other question. Did you make a statement to the American—what—military authorities? A. In this matter?

Q. In this matter. A. Yes, I made a statement to the agent of the Department of Justice in Frankfurt.

Q. When? A. Two months ago.

871 Q. Was that statement reduced to writing? A. Yes.

Q. Did you sign it? A. Yes.

Q. And in that statement did you say anything about a discussion of Nazi pressure during the dinner in 1934? A. No.

Q. I want to ask you, Mr. Deku, how old you were in 1934. A. I was 38 years of age.

Q. Do you know how old Wilhelm von Opel was at the same time? A. I do not know that.

Q. Would you not estimate him to have been a man about 60 or 65 years of age? A. I believe him to be about 60 years old.

Q. And at that time he was one of the leading industrialists in Germany, was he not? A. Yes.

Q. And he was the principal client of your bank, was he not? A. Yes.

Q. And is it your testimony now that he made a statement to you, a bank clerk, which was punishable by death —which could be punishable by death? A. Yes, he

872 was excited, and I was the brother of my brother.

Q. And he made that statement in a public restaurant? A. The statement that he was about to be penalized he made in the office.

Mr. Ingoldsby: I have no further questions.

By Mr. Baum:

Q. Mr. Deku, on your direct examination in referring to the conversation with Wilhelm von Opel in the office of your brother in the spring of 1934, did you say that Wilhelm von Opel said that he had taken assets out of Germany, or had transferred assets out of Germany? A. The question, whether I said that or not just now?

Q. I am asking you what you said on your direct examination. A. I cannot recall the precise term, because I didn't, I wasn't concerned with the difference.

Q. I ask you now, Mr. Deku, in the conversation in your brother's office in the spring of 1934, at which your brother and Wilhelm von Opel were present, did Wilhelm von Opel state that he had taken assets out of Germany, or had transferred assets out of Germany? A. I cannot recall the precise terms that we used.

Q. Referring to your dinner with Wilhelm von
873 Opel and the other gentlemen in the Newa Grill, was there any circumstance of that dinner which fixed it in your mind? A. Yes, that was the only time that I ever had dinner with Mr. Wilhelm von Opel.

Q. And I believe you testified in response to Mr. Ingoldsby's questions that you knew that Wilhelm von Opel was a very prominent man in Germany is that correct? A. Yes.

Q. And did you ever have dinner with Wilhelm von Opel at any other time? A. No.

Q. Now, Mr. Deku, Mr. Ingoldsby asked you about being questioned in Germany some two months ago. You were questioned by representatives of the Department of Justice, is that correct? A. Yes.

Q. Did any attorney of the Department of Justice who questioned you in the United States question you in Germany? A. No.

Mr. Baum: That is all.

Mr. Ingoldsby: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Burling: Your Honor, I am not going on indefinitely about Liechtenstein, but yesterday my friends re-
874 fused to stipulate some facts which I think the Court will take judicial notice of, to compare against the Witness von Opel's testimony concerning the country of which he claims to be a citizen.

At this time I request the Court to take judicial notice, on the basis of a standard book of reference, the Information Please Almanac for 1947, that Liechtenstein became independent in 1866, and the reigning prince is Franz Josef II, who succeeded to the throne in 1938, and that the Landtag, or legislative chamber of Liechtenstein has 15 members.

The Court: Any objection?

Mr. Gallagher: No objection.

The Court: All right, I will take judicial notice of that. Is there any reason why Mr. Deku may not return to Germany?

Mr. Ingoldsby: We have no further need for him.

Mr. Burling: We will make arrangements, then, to return him as soon as we can.

The Court: All right. Mr. von Opel, I believe, will resume the stand.

Whereupon—FRITZ VON OPEL, resumed the stand, and having been previously duly sworn, was examined and testified further as follows:

Cross Examination—(Continued)

Mr. Burling (To the Clerk): Will you mark this? (Hand

ing a document to the Clerk)

875 (Accordingly, a document purporting to be a copy of the Frankfurt Zeitung, was marked Defendant's Exhibit 44 for identification.)

By Mr. Burling:

Q. Do you recall, Mr. von Opel, that you testified yesterday, that while you were in Germany you customarily read the Frankfurter Zeitung? A. Please?

Q. Did you not testify yesterday that it was your custom to read the Frankfurter Zeitung when you were in Germany? A. Yes, definitely.

Q. Now I will ask you to look at Defendant's Exhibit 44, and I will ask you if you will agree that that is a photostat of a page from the Frankfurt Zeitung for August 1, 1931. A. Yes, I definitely read that.

Q. I invite your attention to an article appearing in the middle of the page, "Verschaerfung der Devisenvorschriften". A. Yes, sir.

Q. Do you think that you read that? A. I don't remember this, but it was common knowledge.

Q. And will you read the article now, to yourself. (Pause) A. Yes.

Mr. Burling: I am sorry, I misspoke myself, if Your Honor please, I meant to say the date of this is October 1, 1931.

876 By Mr. Burling:

Q. And the substance of this article is that it is expected that more stringent foreign exchange regulations — A. Not exactly, Mr. Burling.

Q. Will you state what the substance is? A. In some

part of it says that one expects the reflow of capital into Germany.

Q. But is it not true that in so far as it relates to foreign exchange regulations, it states that a tightening of the regulations is expected to come momentarily? A. This article you referred to plays both possibilities one against the other.

Q. Do you think you read this article? A. I can't remember that.

Q. What is your best judgment now as to whether you knew on October 2 either that new foreign exchange regulations had been promulgated, or were about to be promulgated? A. I think it was generally expected.

Q. Going back to your conversations in Wiesbaden after your return from Mannheim, what did your father say to you, or what did you say to your father about calling in a new lawyer? A. We discussed this summary draft of this gift agreement in detail.

Q. You did not have a draft, did you, on the 2nd of
877 October? A. Definitely, yes; this draft I am referring to is the one Dr. Hachenburg gave me. It is called Grundgedanken.

Q. Dr. Hachenburg did not hand you any draft on October 2, did he? A. I am speaking about the paper called Grundgedanken, which Mr. Hachenburg gave me on October 2.

Q. That is translated, the heading of that, "Fundamental Considerations"? A. That is the English translation, yes.

Q. You call that a draft? A. I call it in so far a draft as this was used essentially for the final gift agreement. My father even called this draft too long, and wanted it cut.

Q. What was said about calling in a new lawyer? A. I don't remember exactly at what time my father mentioned Dr. Wronker-Flatow, it might have been prior to the 5th, or it might have been in the morning of the 5th.

Q. What is your best judgment as to the day on which he

mentioned calling in Wronker-Flatow? A. It would be difficult to make a guess after so long time.

Q. At any rate, what did your father say to you, and what did you say to him about calling in this person? A. As I just stated—

878 Mr. Gallagher: Just a minute.

Mr. Burling: May I ask counsel not to interrupt. If there is an objection, it should be addressed to the Court. It is not proper to call out.

The Witness: As I just stated, my father went over this draft, he checked so all the provisions he wanted were in it, and then I guess it was Monday morning when he asked Dr. Wronker-Flatow to shorten it a little bit and put it in proper shape.

By Mr. Burling:

Q. Did your father say anything to you about why he wishes to abandon the draft prepared by the leading lawyer of Germany, and have some other lawyer put it in proper shape? A. This, what we now call draft, and what you translated "Summary Considerations" were the paper along which Dr. Wronker-Flatow finally drafted the gift agreement. In some parts it nearly verbally follows his outline.

Q. Mr. von Opel, you have no trouble understanding English, do you? A. Sometimes, a little bit.

Q. When you fail to understand my question, will you indicate it, and when you do understand my question, will you answer it. I said, what was said by your father as to why the draft prepared by one of Germany's greatest lawyers should be set aside and another lawyer called

879 in to put the matter in proper form. A. As I explained to you before, there was a certain hurry, and he thought it—

Q. I asked you what was said, please—"My father said" — A. I told you that I do not remember those details.

Q. Do you have any recollection as to what your father said on this subject? A. I stated it yesterday, that he didn't want so much legal language, and so long a draft. He wanted it simplified and cut.

Q. Did he say anything about your going back to Mannheim to ask Dr. Hachenburg to prepare a simpler and shorter draft? A. No, he did not. He said to me the opposite. He said even Dr. Hachenburg, whom he knows so long, he wants to make money and wants to write two or three or four different agreements. This short one, this outline is good enough for me.

Q. What did he say about who would pay Wronker-Flatow for his services in drafting the instrument? A. He didn't mention it to me.

Q. Did you say anything to him about it? A. No.

Q. Was there any discussion at this time with Wronker-Flatow about who would pay his fee for this legal
880 service? A. I think it was not the intention of either party to pay or accept any fees for this short and quick redrafting of this summary consideration draft.

Q. At any rate, Wronker-Flatow was called in, you think, on the 5th? A. Yes, that's what I remember.

Q. Did you tell him that Hachenburg had expressed a desire to confer with your father about the legal problems involved? A. That's what I told my father right away when I came from Hachenburg.

Q. Again, you can understand my question, can you not? Did you tell this to Wronker-Flatow? A. To Wronker-Flatow, no.

Q. You didn't mention to him the fact that Germany's greatest lawyer wanted to have a conference on that subject? A. No, that was none of Dr. Wronker-Flatow's business, he was just asking to shorten this specific draft.

Q. He not only shortened it, he lengthened it in at least one respect, did he not? A. He put it into legal language.

Q. Did he not put in new provisions that were not in the Hachenburg draft? A. I do not recollect that.

Q. Do you not recollect that he inserted provisions
881 about the male line of descent in the Opel family?
A. Oh, yes.

Q. That was not in Hachenburg's draft, was it? A. That was not in Hachenburg's draft. That was done upon my wish.

Q. When was it decided that you should sail on the Europa which sailed from Bremerhaven on the 7th of October? A. The purpose of the straight wire to Mr. Smith had to do with that, I think.

Q. I wonder if you will answer the question. When was it decided that you should sail on the Europa? A. I do not understand what you mean by "decided." It was my intention to go to America as fast as I could go.

Q. You and your father must have come at some time to a decision that you should sail on the Europa, is that not true? A. At a certain point, certainly, the Europa was leaving, as you said, on October 7, so, of course, it was necessary for me to make this boat, either in Bremen or Cherbourg.

Q. When was it decided between you and your father that you would take the boat? A. I do not know the exact date, but it must have been on the 5th or the 6th.

Q. And is it not the fact that the reason Hachen-
882 burg's draft was abandoned and Wronker-Flatow told to get up a quick draft on the 5th was because you had to leave Wiesbaden on the 6th in order to catch the boat? A. There was plenty of time to redraft this short agreement.

Q. Is that not the real reason for abandoning the Hachenburg draft, and having Wronker-Flatow get up another draft? A. The real reason, if you ask for the real reason, it was my father's wish that not unnecessarily large amount of lawyer fees would be spent, and he even asked me, he said I should pay for the draft of Dr. Hachenburg.

Q. What was the reason for the great haste in preparing the Wronker-Flatow draft of the gift agreement? A.

There was no great haste, Mr. Burling. I think it wouldn't take any lawyer longer than, let's say, half an hour or an hour to take this summary considerations, or the principal points were in it, and put it in proper legal form.

Q. You knew that Dr. Hachenburg thought it desirable to give further consideration to the matter, did you not? A. Yes.

Q. Thank you. A. He expressed his wish.

Q. That is what I said. The answer is, yes. A. Yes.

Q. Thank you. You have been in contact with
883 lawyers a great deal in your life, have you not? A. No, I can say unfortunately—fortunately not, if began here in America.

Q. You are not familiar with lawyers? A. No, definitely not.

Q. Well, you have been in legal proceedings in connection with your father's fine? A. That was after the drafting of the gift.

Q. I say now. A. Now, yes, certainly.

Q. You have been involved in litigation since 1931 off and on right down to date, is that not true? A. No, you couldn't say that.

Q. In 1933 and '34 you were involved in the proceedings leading up to the fine? A. Pardon me, Mr. Burling, I was not involved personally.

Q. You were associated with lawyers at that time, were you not? A. I talked to my father's lawyers, if that's what you mean.

Q. Yes, that's what I mean. And in 1936 you were involved, you were the principal witness in the Erik Deku prosecution, I believe. A. Yes.

Q. And in 1935 you had Isidor Kresel and the firm of Davis, Polk take a case through the Treasury, through the District Court, and to the Circuit Court of Appeals
884 in New York, did you not? A. Yes, that is what the lawyers did.

Q. In 1937 you were sued by someone, were you not, in

this country? A. Yes, it was what you call a nuisance suit.

Q. How much did you settle it for? A. I was sued for—

Q. How much did you settle it for? A. It was settled, I think, for 13 or 15 thousand dollars.

Q. Was it not closer to a hundred thousand? A. About which suit you are talking, Mr. Burling?

Q. The suit in which you evaded service of summons by going to Montreal in 1937. A. Do you mean the suit of Mr. Cole?

Q. Yes. A. C-O-L-E?

Q. That's right. A. He sued me, as I endeavored to tell you, for half a million dollars.

Q. I asked you what you settled it for. A. And it was settled, if I remember correctly, between 12 and 15 thousand dollars.

Q. It does not refresh your recollection if I suggest to you that it was closer to a hundred thousand? A.
885 Any suit which was settled for a hundred thousand?

Q. Yes, that suit. Is it not a fact that it was settled for about $100,000? A. That is the first thing I hear, Mr. Burling.

Q. And you had lawyers in connection with the attachment of your father's account in Switzerland, did you not? A. Yes, I employed lawyers in Switzerland.

Q. And you had lawyers off and on in connection with these various American investments which are the subjects of this action, did you not? A. Not to a great extent. Of course, if you set up a corporation a lawyer has to do the incorporation work, and the statutes and all those things.

Q. You had lawyers in connection with your internment, did you not? A. Lawyers, as you know, you yourself, they are not admitted in those proceedings. They only could appear as so-called friends of the accused.

Q. Did not Isidor Kresel file briefs in your behalf? A. Yes, he did.

Q. This case has been going on for years, has it not? A. Yes, unfortunately.

Q. And you have had lawyers in this case? A. Yes, definitely.

Q. Have you ever seen a lawyer, except Wronker-
886 Flatow, who would draw up, who told you that he could draw up an instrument transferring an estate of $3,700,000, setting up complicated reserve entries in the space of half an hour from the time he is called in on the problem? A. There are no complicated interests to protect. You are implying something complicated. There was nothing complicated.

Q. Did you hear Dr. Heinrich Kronstein testify the other day in this case? A. Yes.

Q. Did you consider his testimony on the law, German law, relating to the terms of the gift agreement complicated or very simple? A. I think for a German lawyer rather simple.

Q. Are you sure, are you absolutely certain that the gift agreement was executed on October 5, 1931? A. I am definite.

Q. Please let me finish—and not on any other date? A. I am absolutely definite about it. I would not remember, of course, this exact date, but I saw the document and I a day later I got the power of attorney.

Q. Have you always been absolutely clear in your mind that the date was October 5, 1931? A. No, sir, I only knew, if anybody asked me, when was this gift made, I only
887 knew that it was about the end of September or beginning of October. I never could remember any specific dates, and all dates I mention now, I had to refresh my recollections; that is over 17 years ago.

Q. There was a time when you were uncertain as to when this had been executed, is that not so? A. I did not get your question.

Q. Was there not a time when you were uncertain as to

the exact date? A. As to the exact date, that is possible, that I gave an answer that it was about September or October. It is absolutely possible that this exact date offhand was not in my memory.

Q. You were released from internment shortly after V-E Day, were you not? A. Yes.

Q. And at that time this litigation was very important to you, was it not? A. At this time? I think the litigation did not start yet, or did it? Oh, yes, the first suit, I think, was brought in '44, wasn't it?

Q. I believe so. A. Yes.

Q. When you were released from internment, did you not at once go and look at the documents, or try to get the documents together and consult counsel about this
888 lawsuit? A. I personally had very, very few documents, and we got most of the documents from the Department of Justice, and I certainly discussed those documents with my lawyers.

Q. And as late as October 17, 1946, you were unable to state the date of the transfer correctly, is that not true? A. At this time I have not yet received, seen those documents. The documents, most of them, were received by my lawyers about half a year ago, some even only a few months, some even a few weeks ago.

Q. And it is correct, is it not, that you were mistaken as to the date on which the transfer took place, when you were interrogated on October 17? A. You imply something which is not correct, Mr. Burling, I was asked without having any documents, without having any opportunity to refresh my recollection.

Q. You made that statement. The question is simply, is it not true that you were mistaken? A. I was not mistaken. I gave the date, September or October.

Q. Now, Mr. von Opel, when did you see the gift agreement which is Plaintiff's Exhibit 5, for the first time after your release from internment? A. Are you speaking about

copies, or are you speaking about photostat of the original, or the original itself?

Q. I am speaking about any copy which you be-
889 lieve to be a true and correct copy. A. I couldn't offhand make a statement of the sort. It might even be that I had one in my files.

Q. Don't you know that you had one in your files? A. That is possible.

Q. Is it not Exhibit B to your affidavit in the gold case? I show you now from Defendant's Exhibit 8 page 138 a document, Exhibit R; is that not the English translation? A. I think that is the translation of it, yes, done around 1934 or '5.

Q. Yes. A. Yes.

Q. But that was available to you at all times in New York after you were released from internment, was it not? A. Oh, certainly.

Q. And didn't you refresh your recollection as to the terms of the gift agreement and the date of the gift agreement after you were released from internment? A. When I saw the document and read it, and it was dated October 5, I of course knew that the date of the gift was October 5.

Q. Then will you explain why you said the date was something else, when you were interrogated on October 17, 1946, by Government counsel? A. At this time—

890 Mr. Gallagher: I object. The record does not reflect that he gave any other date. The record reflects the latter part of September or October. The record does not state a date.

By Mr. Burling:

Q. Mr. von Opel, were you asked this question when you sold these shares, the proceeds were deposited first

in the name of your father, and did you give this answer: "Those shares were given to me by virtue of this gift agreement. I think it is September 31, is it not?" A. On which date?

Q. September 31. Is that not what you said when you were interrogated on October 17? A. That was my recollection, without seeing any documents. I told you I only knew the about time.

Q. You had the document available at that time. A. Pardon me, no. You always make surprise parties. You all of a sudden ask questions, and I said an about date.

Q. But at this time you were very much concerned with this lawsuit. You had taken it through the District Court, and it was in the Circuit Court here, is that not true? A. But I had not yet gone into the details.

Q. You did not take the trouble to look at the gift agreement, which was available to you in the record of the gold case, is that right? A. That is a rather general question, Mr. Burling.

891

Q. Will you answer it, please? A. What do you mean by that? Certainly I had an opportunity to see it, but it's at the time I didn't pay any attention to refresh my recollection.

Mr. Gallagher: I would like to ask Mr. Burling a question: Was the record of the gold case with Mr. Looney or Mr. Worthington in New York.

Mr. Burling: The record of the gold case was obviously available to defendant and defendant's counsel, who argued this case.

The Court: I think we will have to adjourn at this time until two o'clock.

(A recess was accordingly taken from 12:30 o'clock, p.m., to 2:00 o'clock, p.m. of the same day.)

* * * * *

895 FRITZ VON OPEL resumed the stand and was examined and testified further as follows:

Cross-Examination (Continued)

By Mr. Burling:

Q. Just before the luncheon recess, Mr. von Opel, the question was raised as to whether you had access
896 to the gold case affidavit at the time you were examined by Mr. Looney and by Mr. Worthington in New York in 1946.

Did you have that gold case affidavit before you at that hearing? A. I don't remember it.

Q. I will read you these questions and these answers and see if it refreshes your recollection.

Mr. Gallagher: Will you indicate the page, please?

Mr. Burling: Starting at page 45—

By Mr. Burling:

Q. (Reading) "Question: When did you first become connected with Uebersee?

"Answer: I think all of those details are stated in my rather exhaustive affidavit in the gold case, and offhand I can only say I acquired control in the early thirties.

"Question: In the early thirties?

"Answer: Yes. I think all the details as to how much was paid, and how it was paid, are all mentioned in this affidavit."

Does that refresh your recollection as to whether you had access to the gold case affidavit at the time of that interrogation? A. It is possible that Mr. Connor had it.

Q. But you referred to the affidavit as "this affi-
897 davit", in that proceeding, didn't you? A. I don't remember whether the book itself was present at the time.

Mr. Burling: If Your Honor please, Mr. Gallagher asked me to state as a fact whether the book was present. I am advised, whether or not Mr. von Opel produced it, Mr. Worthington did have it at that time.

Mr. Gallagher: I asked on what page that portion about Plaintiff's Exhibit 31 was read from. Was that before page 45, or after?

Mr. Burling: I don't know. We will tell you in a moment.

Mr. Eaum: It is page 51.

Mr. Gallagher: Had the affidavit been shown at the time?

Mr. Burling: Are we conducting a lawsuit, or a general conversation?

By Mr. Burling:

Q. Do you know of your own knowledge, Mr. von Opel, whether on October 5 Wronker-Flatow consulted any law books before drawing up Plaintiff's Exhibit 5? A. I couldn't tell you that. Mr. Wronker-Flatow had his own office.

Q. If you don't know, the answer is no, and let
898 us proceed. A. No.

Q. Do you know whether he gave any study to the provisions of the German income tax law? A. I do not know that.

Q. Did you have any discussion with him on this day as to who would pay the tax on the income which might accrue from the proceeds of the gift? A. I don't think that this question at this time was discussed at all. We all knew that ultimately some income tax had to be paid. The only question was whether my father paid it when he sold it, or whether I paid it when I sold it.

Q. Are you talking about income tax now, or what we call a capital gains tax? A. You asked me about an income tax, and I thought you both meant a capital gains tax.

Q. I am talking about income which might accrue in the future from the proceeds of the 600 Opel shares.

Was there any discussion between you and your father and Wronker-Flatow as to who would be liable for the income tax on that income? A. As no income was stipulated in the contract, I don't know what you refer to, Mr. Burling. What income do you mean?

Q. Income which would accrue. You have testified already, Mr. von Opel, that your father told you that
899 the proceeds of these 600 shares would bring in an income of nearly a million marks a year. That income would be taxable to somebody, wouldn't it, under German income tax law? A. No. I think, Mr. Burling, you are mixing things up. We speak about a million income just as a matter of speaking. If those shares would be sold against dollars, of course, the income would be in dollars.

So it was only in a manner of speaking we said 20 per cent I should keep and the other 80 per cent I should account to my sister. Whether the income was in marks or in dollars, it didn't make any difference. It was an accounting process.

Q. Whether or not it was in pengos or dollars or marks or pounds, it would be income and somebody would have to pay the income tax on it—isn't that so? A. No, Mr. Burling.

Q. Will you explain why the income, which in the marks equivalent would be a million marks a year, would not be taxable to somebody? A. It depends upon how it is taxable. If the securities were put into a corporation, it would be different.

Q. Fine. And did you have any conversation with Wronker-Flatow about this income tax problem? A. I think not. I don't remember it. It might have been; I don't remember it.

900 Q. You don't have any present recollection of any talk at all about the problem of who would have to pay the income tax on the income? A. I think it was not one of the matters with which we were concerned at the time, Mr. Burling.

Q. Did you have any discussion as to what effect, if any, upon income tax liability the so-called usufructuary provisions might have? A. I think in the letter of Dr. Hachenburg—

Q. The question is conversations between you, Wronker-Flatow and your father. A. I don't remember these conversations.

Q. So far as you know, you did not have any? A. My father never wanted to draw any income. So it was impossible that he figured income taxes for himself, on an income he didn't want to draw.

Q. A lot of people don't want to pay income taxes that do have to pay them. Isn't that so? A. Yes. But I was the one, you see, concerned with this question, and not my father.

Q. And did you and Wronker-Flatow discuss the possibility— A. I don't think so.

Q. Let me finish the question, please.

Did you and Wronker-Flatow discuss the possi-
901 bility that you would have to pay the income tax on the entire income, even though you were allowed to keep only 20 per cent of it for yourself? A. I think you don't see, Mr. Burling, the provisions of the gift agreement.

Q. You are absolutely right. A. You don't see it.

Q. I certainly don't. But did you have any such discussion with Wronker-Flatow? A. I don't think I had, because he wasn't my lawyer.

Q. And you don't think your father did, either, do you? A. I am certain that my father didn't ask him about income taxes on an income he never intended to draw.

Q. But the income did accrue. What was going to happen to the income? A. I would have to pay the taxes, if there was an income.

Q. All the tax? Is that right? A. It depends if it is incorporated in a corporation, or it depends upon the state of it.

Q. But somebody was going to own these assets. A. Certainly.

Q. And somebody, therefore, would receive the income. Isn't that so? A. Certainly.

902 Q. And you were to receive 20 per cent of the income. Isn't that so? A. No.

Q. Isn't that what you testified to two days ago? A. That is not—

Q. Isn't that what you testified to two days ago? A. I told you it was just an accounting procedure. So I had to account for the remaining 80 per cent with my sister.

Q. But did you not say your father said, "I want you to have 20 per cent, which will be about as much as your salary previously was, and the rest of the money is for the benefit of your sister"?

Mr. Gallagher: Your Honor, I have to interrupt Mr. Burling. The record, I am certain, does not state that to be a fact, that the rest of the money was for the benefit of the sister.

The Court: He can ask the witness what his recollection was.

By Mr. Burling:

Q. Didn't you say that? A. That the 80 per cent was for the benefit of my sister?

Q. Isn't that right? A. How could I say it, when it was for accounting purposes?

903 Q. Who was to be liable for tax purposes, as you understood it? A. For tax purposes, always the owner of the property was liable.

Q. Fine. Who did you understand was to be liable for the tax on the 80 per cent of the income? A. You cannot separate those two groups.

Q. Can't you answer my question? A. No, I cannot. It isn't clear, Mr. Burling. I am sorry; I don't understand it.

Q. Twenty per cent of the income was to be held by you, you testified. That leaves 80 per cent. A. I didn't say it was to be held by me.

Q. Or used by you. A. I said there were those figures to be used for accounting purposes.

Q. Didn't you testify on direct examination that your father said you were to take 20 per cent, which would be about the same as your salary— A. He wasn't—

Q. Didn't you testify to that effect? A. I testified that both children should be on an even footing.

Q. Mr. von Opel, please answer my question, so we will not be here indefinitely—

904 Didn't you testify that 20 per cent was to be used by you as the approximate equivalent of your old salary? A. That is the reason that my father—

Q. Did you testify to that effect? The answer is yes or no. A. I do not recollect—if the record will show it.

Q. You don't know whether you testified to that or not? A. I testified in general about this accounting procedure. You are mixing up two things, Mr. Burling. No income tax authority in the world would accept a division of 80 per cent and 20 per cent. I could not come to the American tax authorities and say I only got 20 per cent. I had to pay the income tax, as the owner of the property, of the full 100 per cent.

Q. Let us talk about the German tax authorities. What did you intend, on October 5, to do with respect to the income tax, in Germany, due on the 80 per cent of the income? A. Pardon me. I was not concerned with any income tax in Germany, because I was living outside of Germany.

Q. All right. A. So no income tax to pay inside of Germany was due.

Q. And it was contemplated that if these shares were sold, the proceeds would be invested ultimately in the United States? Isn't that true? A. It was left to me what to do about it.

905 Q. And you intended to invest in United States properties, didn't you? A. I did that, yes.

Q. You intended to do that, didn't you? A. The intention at this time, Mr. Burling, wasn't clear. There was a chance that if General Motors would have accepted my proposal for the gold clause, that I would have gone on with the escrow agreement.

Q. I said "if"—that if you sold the Opel shares, you intended to buy American investments, didn't you? A. It didn't necessarily mean American investments—some investments.

Q. You knew, wherever you were going to live, you would have to pay an income tax, didn't you? A. Definitely.

Q. And was it your understanding you were going to have to pay an income tax on all of the proceeds? That is, on every cent of income derived from these shares all the shares, it was to be taxable to you? Is that your testimony? A. I think the owner has to pay the income tax.

Q. Fine. Will you answer my question? A. And the law looks to the beneficiary owner.

Q. Fine. I want an answer to my question, and not a lecture on abstract law. A. I do not understand you,
906 Mr. Burling, what you mean. Which country do you mean?—Germany?

Q. Whatever country you were going to settle in and therefore were going to have to pay income taxes in, was it your understanding that you were to be liable for all of the income? A. Certainly. It depends. In some countries you can make agreements on the amount of income tax you pay. That all depends. It is such a general question. If you ask me a specific question, I can answer it clearly.

Q. At any rate, the tax problem was a very involved one, was it not? A. At this time the tax problem didn't bother us at all, Mr. Burling.

Q. Won't you agree at this time the problem of who

had to pay the income taxes was an involved problem? A. Not at all. What was involved about it?

Q. You haven't been able to tell me what was your understanding about the income taxes yet, have you? A. I told you that in every country the owner or the beneficiary owner has to pay the income taxes. That was clear to me from the first.

Q. But since we do not know who the owner of this property would be, under the usufructuary provisions, we don't know who was to be liable for the income taxes.

A. Pardon me. The ownership of title was always
907 clear.

Q. It is clear to you that tax liability does not run to the owner of title, but to the person who gets the beneficial interest in the income? A. The beneficial owner, yes.

Q. Who the beneficial owner of this property was to be, under the gift agreement, is by no means clear. Isn't that true? A. No, I didn't say that.

Q. Isn't it true that it is by no means clear who the beneficial owner would be? A. If my parents would not draw any income, I would be the beneficiary, I would have to pay the entire income taxes. I could only claim an exemption for the part eventually drawn by my parents, if they desired.

Q. But you had no discussion whatever with any lawyer prior to drawing up this instrument? A. On income taxes?

Q. Yes. A. No.

Q. Did you ask Wronker-Flatow as to whether you could minimize the taxes by assigning the proceeds of the gift to a holding company? A. I think I did not discuss this problem with Dr. Wronker-Flatow.

908 Q. Is it not true that you told Dr. Hachenburg that a man named Faust is concerned about the problem whether or not any income tax may be payable under the provisions of Section 30, subsection 1, of the

Income Tax Act, "If your son sells the shares which you transferred to him by way of gift"? A. I think that has to do with the capital gains tax.

Q. I see. But Faust did raise a problem about the capital gains tax, did he? A. Certainly; everybody knows—

Q. Did he? The answer to that is yes or no. A. Yes, I think so. I didn't speak to Dr. Faust.

Q. But you did tell Dr. Hachenburg that Faust was concerned about it, didn't you? A. Yes, that is possible.

Q. Will you look at Plaintiff's Exhibit 7 and see if you and Hachenburg did not have an extended discussion about income taxes and other tax liabilities (handing)? I refer you to paragraph 5.

Mr. Ingoldsby: Is that paragraph numbered 5?

Mr. Burling: Yes.

May I hand Your Honor the paragraph there (indicating)?

By Mr. Burling:

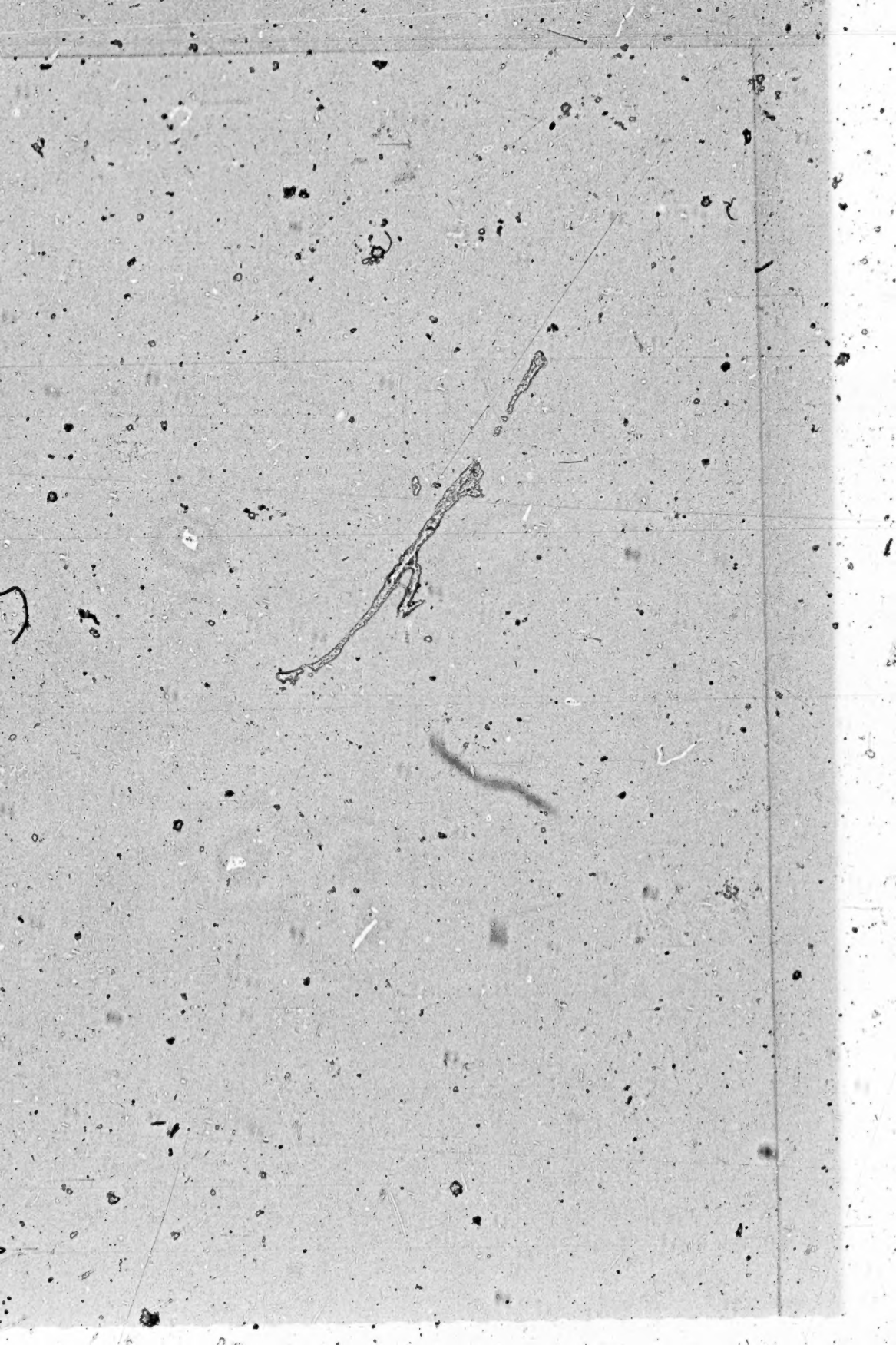
Q. Does that refresh your recollection whether you had a detailed discussion with Hachenburg? A.
909 Dr. Hachenburg refers to two different kinds of taxes—

Q. Will you again, once more, please answer my question?

Does that refresh your recollection as to whether you had a detailed discussion on October 2, 1931, with Hachenburg about taxes? A. I do not know that. I do not remember it, because this letter was written after I had left.

Q. But does that letter not refer to a matter communicated to Hachenburg by you?

Will you look at Section 5 again? A. I don't find any such reference in paragraph 5. If you will show it to me. I read it all over, but I didn't see it.



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TRANSCRIPT OF RECORD

(Pages 609 to 1216)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 178

UEBERSEE FINANZ-KORPORATION, A. G.,
PETITIONER,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL AND AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JULY 7, 1951.

CERTIORARI GRANTED OCTOBER 15, 1951.

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,464

UEBERSEE FINANZ-KORPORATION, A. G.,

Appellant,

—against—

J. HOWARD McGRATH, Attorney General and as successor to the Alien Property Custodian,

Appellee.

Appeal from the District Court of the United States for the District of Columbia.

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Mr. Gallagher: What was that answer, Mr. Reporter?

(The last answer was read by the reporter.)

Mr. Burling: I may have the wrong exhibit.

By Mr. Burling:

Q. Now, will you look at Plaintiff's Exhibit 10. Does this not state—

"Your son informed me that Dr. Faust is concerned about the problem whether or not an income tax may be payable under the provisions of Section 30."

A. On which page is that, please?

910 Q. The first page. A. Yes, I see that.

Q. Does that refresh your recollection that you did have a talk with Hachenburg about tax problems? A. That I referred to him the thoughts of Dr. Faust, yes.

Q. And you didn't talk to Wronker-Flatow about that subject? A. I don't think so, that I talked it over with Dr. Wronker-Flatow. There wasn't so much time left to go into this intricate detail of taxes.

Q. That is my point—there were intricate details of taxes that were just left undiscussed? Isn't that true? A. No, Mr. Burling; you misunderstood me. Taxes had to be paid. So it was of no importance who paid it. Either my father had to pay it or I had to pay it.

Q. Your father was a very rich man, even after this gift, wasn't he? A. Yes.

Q. Aside from this gift, you were insolvent? Didn't you testify to that fact? A. I had no money of my own, yes, that is what I testified.

Q. Wouldn't the question of whether your father had to pay the taxes, or you had to pay the taxes—

911 Mr. Ingoldsby: Just one second, please.

Your Honor, if I may make a suggestion, or an objection by way of suggestion, for the purpose of clarity, we are talking about three different types of taxes here.

Mr. Burling: You are talking about ten different kinds.

Mr. Ingoldsby: At least three—the capital gains tax, the tax on the gift, and the tax on income attaching to the gift.

In order to avoid confusion with the witness, may I suggest that the particular type of tax spoken of be identified?

The Court: I will have to leave that to Mr. Burling.

Mr. Burling: If Your Honor please, my point is that there was a wide variety of tax problems, all of which were ignored.

The Court: I think the question is permissible.

By Mr. Burling:

Q. Did you discuss with Wronker-Flatow any question about American income tax law? A. I don't think so.

Q. In the event you had predeceased both parents, the gift would have reverted to your father and mother. Isn't that correct? A. What is what is stated in the gift contract.

Q. And did you have any discussions with
912 Wronker-Flatow about the effect of that possibility on the estate tax, which either your father or your mother might have to pay? A. I don't think so, because it is obvious under German tax laws that if such a contingency happens, you have the old, prepaid gift tax refunded in some way. You haven't to pay double taxation.

Q. And what was said about the gift tax, between you and Wronker-Flatow? A. I don't think Dr. Wronker-Flatow had anything to do with these tax problems.

Q. I see. A. He wasn't my father's tax adviser.

Q. Your father did have a tax adviser, didn't he? A. He always talked over his tax problems with one of the employees at General Motors.

Q. Who was that? A. I think it was Dr. Faust.

Q. And Dr. Faust was not called in on October 5, was he? A. These tax problems, as I told you—

Q. Was he? A. No, he wasn't called in.

Q. Thank you. Now did Dr. Wronker-Flatow dictate a preliminary draft of your version of the gift agree-
913 ment, or did he dictate the final draft directly to a stenographer? A. I wasn't present. He did that in his own office.

Q. You never saw a preliminary draft, or went over it with him? A. I don't remember, Mr. Burling. I only saw the final copy of which we now regard as the original.

Q. What is your best estimate as to the amount of time which elapsed between the time your father told Wronker-Flatow to revise the Hachenburg draft and the time your father signed the Wronker-Flatow draft? A. That would be a very wild guess, after seventeen years.

Q. Well, give us your best estimate, please. A. At least several hours.

Q. At least several hours? A. I think so. But I think the actual redrafting, as I told you this forenoon, wouldn't take more than half an hour or an hour. It wasn't a very difficult job.

Q. Wronker-Flatow had never previously been your father's personal counsel, had he? A. And not even on this occasion, no.

Q. Had he? A. No.

Q. And not even on this occasion either. A. He acted as an international lawyer present in the building,
914 and my father, who knew him well, asked him to do him a favor and drafted this agreement. You cannot call him his counsel, because he wasn't paid for it, as far as I know.

Q. By the way, under the terms of your father's will, you either could become the executor or you could name the executor? Isn't that right? A. Under the terms I was to become the executor, yes. And I had the right, if

I so desired and if I would be absent, to appoint an executor, yes.

Q. Are you familiar with the estate which your father left? A. No; I have no time to go into this matter yet.

Q. Can you tell us whether among the assets of the estate is a debt owing from Wronker-Flatow in the sum of $20,000? A. That is possible.

Q. Well, can you say whether Wronker-Flatow does or does not owe the estate $20,000? A. I think so. But I would not testify out of my own knowledge, because I have not yet seen a list of the assets of the estate.

Q. I see. A. And the estate would not get this $20,000, because all those amounts go to the military government.

915 Q. Is it not true that it was your intention while you were coming to America on the Europa to put the Opel shares to General Motors? A. No, you can't say that.

Q. The answer, then, is no? A. It was my intention to discuss—

Q. The answer, Mr. von Opel, is no?

If you would just answer my question, we would get along much faster. A. All right, yes.

Q. On October 2nd, in the course of your discussion with Hachenburg, you had talked over the creation of a holding company into which to put the proceeds of the gift, hadn't you? A. That was a suggestion of Dr. Hachenburg, as expressed in his letter of October 3, yes.

Q. And at that time, while you were having a discussion with Hachenburg, didn't you contemplate selling the Opel shares and buying new investments and putting the new investments in Uebersee? A. At the time I had my discussion with Hachenburg, I had only one interest in the matter, and that was that title should pass to me, and that the thing would be done as quickly as possible.

Q. But you haven't answered my question, once

916 again.

Didn't you intend, on October 2nd, didn't you expect to sell the Opel shares and buy new investments and

put them in Uebersee? A. On October 2nd, I don't think so.

Q. What were you going to do with the holding company? A. Dr. Hachenburg suggested it, as you see out of the letter.

Q. You didn't think you were going to put the Opel shares into the holding company, did you? A. Dr. Hachenburg is talking about proceeds.

Q. Yes. You did not think you were going to put the Opel shares in the holding company, did you? A. If I would keep the Opel shares, there would be no chance of putting them in the holding company.

Q. So the answer to that question is yes, isn't it?

Mr. Gallagher: What is the question?

By Mr. Burling:

Q. You did not intend to put the Opel shares in the holding company, did you? A. I don't think so.

Q. Thank you. At any rate, the possibility that you might sell the shares to General Motors was discussed by you and your father, was it not? A. Certainly; I pointed out to my father that I was very much afraid about this lack of any gold clause in the contract,
917 and that the first thing I would do would be an attempt to get that changed.

Q. The first thing you would ask for would be a gold clause? Is that right? A. That is what I intended first, to put the escrow agreement on a safe basis.

Q. Now, you have testified, also, that one of the considerations that motivated you coming to Wiesbaden and asking your father to make the gift was that the foreign exchange regulations were becoming more stringent.

Now, will you explain what good a gold clause would have done you in the event that General Motors had subsequently exercised its option and bought the shares? A. You just spoke about the date of October 5. They were

at this date my shares and I was very much concerned about it, and I had nothing to do with German foreign currency regulations. So I could not understand this question.

Mr. Burling (to the clerk): May I have Plaintiff's Exhibit 5, please—and 5-A?

By Mr. Burling:

Q. Will you examine Plaintiff's Exhibit 5 once again—

Mr. Burling: And may I hand it once more to your Honor (handing)?

By Mr. Burling:

Q. This recites, does it not, in the beginning paragraph?—

"It is our common desire that these stocks remain with the male line of our family in order to preserve a personal connection between the bearers of the name of Opel and the work of our father Adam Opel."

That clause was put in by Dr. Wronker-Flatow? Is that right? A. I think upon my suggestion it was?.

Q. Your suggestion? A. If I remember correctly.

Q. And at that time you did not expect the shares to remain with the male line of the Opel family, did you? A. It was put in for a certain purpose.

Q. Will you state what the purpose was? A. Within three months this gift had to be reported to the government. And at this time the government would know that I was, or they knew before, that I was a devisen auslander and that a gift was made entirely legal from a devisen inlander to a devisen auslander.

Q. Please go ahead and explain the purpose. A. The purpose was to explain to the authorities that no immediate sale was contemplated.

Q. In other words, the purpose was to deceive the authorities, wasn't it? A. It isn't a deception, no.

919 Q. How do you characterize it? A. In any event, Mr. Burling, within three or four years—

Q. How do you characterize it? A. In within three or four years those shares had to be sold anyhow.

Q. I know that. A. So this whole phrasing of this sentence—

Q. Is deliberately deceptive, isn't it? A. If you call it such.

Q. Now, will you explain once more why it is that after your father gave you the shares on October 5, he then on October 6 gave you a power of attorney; and why in New York you acted under the power of attorney as your father's attorney in fact, instead as of owner of the shares? A. This was done on the advice of Dr. Wronker-Flatow, who had a large experience in dealing with American enterprises and banks.

He told my father and me at the time that it would be awfully difficult for me to go over to America and deal under the escrow agreement, based upon this gift agreement, because it was a German instrument.

Q. Well, Wronker-Flatow was in fact General Motors' German attorney, wasn't he? A. He was, I think,

920 yes.

Q. Did he say that he would telephone or cable to General Motors and tell them that the instrument was all right, because he himself had drafted it? A. Why should he?

Q. If he thought there might be difficulty with General Motors as to the validity of an agreement, would he not say, "I am General Motors' German attorney and I will call them up and tell them I drafted the agreement and it is valid." A. We asked him to do just the opposite, to keep it secret. We didn't want to have it shouted over the rooftops.

Q. Did you want to have General Motors know about the gift? A. I don't think so. There was no necessity.

Q. And in fact you didn't advise General Motors about the gift, did you? A. No, I didn't. I thought I had advised them, but I found out it was a mistake; I did not advise them.

Q. Will you explain how it is that your father could give you power of attorney on October 6, 1931, to deal with property when he had no title whatever to that property on that day? A. If you ask me for a legal opinion, I heard an expert on law testify to that that that is usual procedure in Germany, nothing uncommon.

Q. I see; all right.

921 Now, is it true that on Monday, October 5, you and your father were still undecided as to whether he should go to New York or whether you should go to New York? A. Oh, no, Mr. Burling; that is quite different.

Q. It was never thought your father might go to New York? A. No; but I asked him—

Q. Just a moment. Please answer my question and not volunteer. A. No. He did not want to go to America.

Q. I see. Now, Plaintiff's Exhibit 52 reads:

"John Thomas Smith, New York.

"Are you available for interview in personal matter in New York on October 13? If so myself or my son intends sailing Wednesday for New York. Stop. Cable reply will oblige. Kind regards."

Signed Wilhelm von Opel.

Now, did your father send that cable to Mr. Smith on October 5? A. Yes; it was upon my suggestion.

Q. And on that day your father had no intention of going to New York? Is that right? A. I told him—no, he did not want to go, no.

Q. Will you explain, now, why you caused your father to tell Smith he was thinking of coming to New

922 York, when in fact he wasn't? A. Because Mr. Smith intended to come to Europe and, as we had

been advised, he intended to sail in the middle of October, and I could not be in New York before the 13th.

So I thought if I announced my visit, he might not have time for me. But if my father announced this visit, he will make it possible to hear him, you see.

Q. And it was your purpose to deceive Mr. Smith? Is that right? A. If you call this a deception, the entire business life is full of deceptions—in order to make sure that he was present in New York awaiting us there and he should not depart before I was there.

Q. Now, going back to the usufruct provisions of the gift agreement, you were opposed to them, were you not? A. That is a rather general question.

Q. Well, you protested against their insertion, didn't you? A. Yes.

Q. Now, skipping some transactions here, is it not true that ultimately the proceeds of the Opel shares found their way into Overseas Finance Corporation, or the plaintiff here? A. Yes, sir.

Q. And it is true, is it not, that with the exception of three qualifying shares, the shares were put into
923 Box 1917 at the Schweizerische Kreditanstalt in Zurich? A. Yes, sir.

Q. And is it true that the key to that box was handed by you to a man named Hans Frankenberg, isn't it? A. Yes, I think in 1934 it was, if I am not mistaken.

Q. 1934? A. Yes, I guess so.

Q. Will you fix the date as close as you can, please? A. I think it was 1934, or a little bit ahead of this time. Let us say around 1934.

Q. What is your best estimate as to the month? A. I can't guess at it. It is so long ago. I think it was in 1934; and if I guess roughly, I think in the spring or summer of 1934—some such date.

Q. The spring or summer of 1934? A. I think so.

Q. And will you agree with me that that was box 1917? A. I don't remember this number. It is possible.

Q. And you don't dispute it? A. Please?

Q. You don't dispute my statement that it was Box 1917? A. No, certainly not.

Q. Will you tell the Court in detail just exactly what you did with the key to that box, and all this surrounding conversation you had with anyone to whom you gave the key to the box? A. In this year, you mean?

924

Q. You say you gave the key to Frankenberg? A. Yes.

Q. What did you say to Frankenberg and what did he say to you, when you gave him the key? A. I gave him the key, and I think the box was in my name, in my personal name, and I gave him the key to open it jointly, I think, with Mr. Geng, who is the auditor of the corporation.

Q. How many keys were there to the box? A. I think, if I remember correctly, I had a key, too, and lost it shortly thereafter.

Mr. Burling: At this point I ask that counsel concede the genuineness of a record taken from the records of the plaintiff corporation, produced pursuant to Court order.

(The document was handed to counsel for the plaintiff.)

Mr. Burling: I ask that this be marked for identification.

The Deputy Clerk: Do you want this to be 45-A? This is the German.

Mr. Burling: Yes; I will give you 45, also.

(The documents referred to were marked Defendant's Exhibits 45 and 45-A for identification.)

925

Mr. Gallagher: The original of this is a copy out of our books?

Mr. Burling: I have handed counsel an English translation of a photostat of a document produced pursuant to Court order, as the books and records of plaintiff corporation.

By Mr. Burling:

Q. I hand you Defendant's Exhibit 45-A—

And may I hand Your Honor the English?—

Mr. Ingoldsby: We concede the genuineness of it, as requested.

By Mr. Burling:

Q. This is a letter addressed to Davis, Polk, Wardwell, Gardner & Reed, dated May 21, 1935, and it reads:

"The stock of our company is at the power of disposal of the Adler and Company Aktien Gesellschaft as security for this debt, in that Dr. Frankenberg of Aktien Gesellschaft, delegate to the board of directors, has in his possession the only key for the safe number 1917 with the Schweizerische Kreditanstalt in Zurich."

Does that refresh your recollection as to how many keys there were and who had possession of them, or it? A. May I ask you, whose letter is that?

Q. May I ask you whose letter that is? This is a letter taken from the files of Uebersee Finanz-Korporation. A. This is an unsigned letter.

926 Q. Well, I will call upon any representative of the plaintiff to state whose letter it is. A. I couldn't tell you. It might be a draft of a letter.

Q. Was it the custom in keeping the files of Uebersee Finanz-Korporation to prepare drafts and then put them in the files, without indicating that they were not sent? A. I saw the books of the corporation for the first time after they were sent here, and I found in many instances very many drafts of agreements and so on.

Mr. Burling: I offer the letter in evidence, and I submit, Your Honor, that the plaintiff is bound by its own books and records.

The Witness: This is an unsigned letter.

Mr. Burling: I submit, Your Honor, that an outgoing letter kept in the regular course of business by the plaintiff corporation must be assumed to have been sent, unless proof is adduced to the contrary.

The Court: If there is no objection to it, I will admit it.

Mr. Ingoldsby: No objection, Your Honor.

Mr. Gallagher: As a matter of fact, I might state for your information, Mr. Burling, I think, although I have not seen this, this is probably a letter in response to a wire sent from New York by Mr. von Opel, at the request
927 of Davis, Polk, Wardwell, Gardner & Reed, in which certain facts were set forth, and asking the Swiss whether those facts were correct—and I believe this is the answer to it. We haven't found the answer. We have no objection to the letter.

(The documents previously marked for identification Defendant's Exhibits 45 and 45-A were received in evidence.)

By Mr. Burling:

Q. In any event, does the reading of the letter refresh your recollection as to how many keys there were? A. I haven't seen this. May I have it back again?

Q. This document recites—

Mr. Ingoldsby: The witness is looking at the letter, Mr. Burling.

By Mr. Burling:

Q. Have you found the— A. Yes, I see the reference here, yes.

Q. Does it refresh your recollection as to how many keys to that box there were? A. Apparently at this time, no.

Q. And to the best of your knowledge and belief, Frankenberg had it? A. He was empowered, jointly with Geng.

Q. To the best of your knowledge and belief,
928 Frankenberg had the one key? A. I don't know who possessed it. They both could open the safe.

Q. Could you open the safe without having the key? A. Certainly not. But if two men are empowered, they both have to go together. And I think that was the agreement.

Q. At the time you delivered the key to Frankenberg, what did you say to him, and what did he say to you? A. It was in about April, 1935, after—

Q. What did you say to him and what did he say to you? A. I asked him whether—I described the troubles in Germany and asked him whether he would be willing, if my father so desired, to act as his representative.

Q. Did he say he was already your father's representative? A. No.

Q. Was he? A. No.

Q. What did he say? A. He said if my father wanted him to do that, he would be willing.

Q. And did he take the key? A. He had the key a year.

Q. When did you first give him the key? A. As I told you before, it must have been 1934.

929 Q. My question was what did you say to him and what did he say to you when you handed him the key? A. I told you before, Mr. Burling, I gave him the key, if I could remember it correctly, in 1934, or even prior to this time.

Q. Are you unable to understand my question? I said three times what did you say to Frankenberg and what did Frankenberg say to you when you first handed him the key? A. At this time an agreement was made and I think deposited in writing with the bank, that Frankenberg jointly with Mr. Geng could open the safe. And at this time I myself had a second key.

Mr. Ingoldsby: May the record show at what time that was?

The Court: He said the first time. I think he said in 1934.

The Witness: 1934, or even sooner.

By Mr. Burling:

Q. Did you have any discussion with Frankenberg when you handed him the key?—yes or no? A. The discussion I just described.

Q. You didn't describe the discussion. A. Yes, that the bank was instructed—

Q. Who said what? What was the discussion? Let us see what you said to Mr. Frankenberg, and then
930 what he said to you? A. The bank was instructed—

Q. You said that? A. I was the owner of the safe, and I had instructed the bank.

Q. Won't you tell me what you said to Mr. Frankenberg, Mr. von Opel? What did you say to him? A. Frankenberg?

Q. Yes. A. That he had access to the safe, together with Mr. Geng. I think he insisted upon having Mr. Geng—

Q. And what did he say to you? A. Nothing.

Q. He didn't say a thing to you? You handed him the key, and he didn't say anything? A. There was nothing in the safe but those Overseas shares, and they had been taken out for stockholders' meetings.

Q. But you handed Frankenberg a key to a box in which securities valued at perhaps four million dollars—A. Oh, you are mistaken. Why four million dollars?

Q. All right. You handed him the key to the box in which the Uebersee shares are contained. Did he say nothing at all? A. Those shares had no great value, Mr. Burling.

931 Q. Fine. Did he say anything, Mr. von Opel? A. No, I just—

Q. He was just absolutely silent? A. He asked me, if I remember correctly, that he wanted Mr. Geng as a joint,

so to say, how would you express it, that they could both go and get the shares for stockholders' meetings.

Q. I see. And that is all you can remember— A. And that was at the time the purpose—

Q. I wish you would wait until I ask the question, and then try to answer it—

That is all you can remember about the conversation at the time you handed Frankenberg the key? A. Yes. And I think—

Q. Thank you. And at that time you yourself had a key? A. Yes, I think so.

Q. What happened to that key? A. I think I lost this key.

Q. And at a later date you had a conversation with Frankenberg about acting as your father's agent? Is that right? A. Much later.

Q. And what is your best estimate of the date of
932 that conversation? A. I think at least three-quarters of a year, if not more.

Q. When does that bring us to? A. That brings us to April, 1935.

Q. And at that time, as I understand it, you asked Frankenberg to continue holding the key as your father's agent? Is that right? A. Yes; I described to him the situation and asked him—

Q. Is that right? A. Yes.

Q. And did you tell him at that time you had lost your key and the key in his possession— A. I think——

Q. Wait a minute, please. Did you tell him at that time you had lost your key and he had, therefore, the only key outstanding? A. I don't remember this conversation.

Q. At that time was Frankenberg your father's agent? A. In the strict legal sense of the word, as I see it now, I think no.

Q. When for the first time did you tell your father that Frankenberg was holding the key? A. That was about five to six months later, when I had returned from America.

933 Q. Well, fix the date, please. A. This was in the summer or fall of 1935.

Q. Before that time, had you even spoken to your father about Frankenberg's being his agent? A. No.

Q. You had no conversation with your father whatever —A. No.

Q. —indicating that Frankenberg was his agent? A. No.

Q. Now, I will read you one sentence from the gold case affidavit, which was read to you by Mr. Gallagher:

"This key is held by Dr. Frankenberg as agent and representative of my father, Wilhelm von Opel, for the purpose of safeguarding his usufruct."

Was that statement, which comes from your affidavit, true or false? A. At this time I consider Dr. Frankenberg—you are speaking about April, 1935—I considered him at this time as the agent of my father, because I felt that my father had all interest or even would be forced by the Nazi Government to establish something—

Q. Will you answer the question? Is the sentence that I read to you true or false? A. I believe at the time that it was correct.

Q. You now know that it was false, do you? A.

934 I now learned more about the legal detail of a power of attorney, and representatives, and I am now told by my legal advisers that the usufruct only can be established if the usufructuary directly empowers the trustee.

Mr. Burling (to the deputy clerk): May I have this marked the next number, please?

(The document referred to was marked for identification as Defendant's Exhibits 46 and 46-A.)

By Mr. Burling:

Q. Will you explain how it was that on June 5, 1935, when you executed this affidavit, you thought that Frank-

enberg was your father's agent, if you had never spoken to your father about Frankenberg's being his agent?

Mr. Ingoldsby: May I interrupt? I object, Your Honor. The statement relates to whether or not Frankenberg was the agent of the father. The set of facts upon which the statement is based has been stated. I submit that anything from there on is a legal conclusion as to whether or not those facts constitute agency.

The Court: He can explain his statement, and his understanding of his own statement.

By Mr. Burling:

Q. Will you go ahead, please? A. Please?

Q. Will you answer the question, please?

935 (The pending question having been read by the reporter):

The Witness: I thought that my father would be forced to establish a usufruct by the Nazi Government, and I wanted to be helpful. And I was at this time thoroughly convinced that he ultimately would be forced to do so.

By Mr. Burling:

Q. So your statement is that you swore that Frankenberg was your father's agent because you thought or you were thoroughly convinced that in the future your father would make him his agent? Is that right? A. It is not quite correct.

Q. Well, will you state what is quite correct, then? A. I considered him as my father's representative, and I thought I had acted in the best interest of my father, who was at the time heavily threatened by the Nazi Government.

Mr. Burling: I ask at this time that plaintiffs concede the genuineness of Defendant's Exhibit 46-A, which is a photostat of a document from the files and records of the plaintiff.

Mr. Gallagher: No objection.

Mr. Burling: I offer it in evidence.

(The documents previously marked for identification Defendant's Exhibits 46 and 46-A were received in evidence.)

936 By Mr. Burling:

Q. Prior to this agency conversation with Frankenberg, in I think you said April, 1935, it was within your knowledge that Frankenberg was an old friend of your father's, wasn't it? A. "An old friend," I think, goes a little bit too far. My father knew him since very long time, and so did I. But he was not, as you can say, a friend of my father. He was an acquaintance.

Q. And I asked you yesterday, is it not the fact that in the gold case you stated that your father received a stipulation from you at the time of the gift, that you would put the proceeds in a holding company— A. That was my intention.

Q. —to safeguard your father's usufruct. A. That was my intention. At the time my father didn't want it.

Q. Well, at any rate, you had put the proceeds of the gift into a holding company, didn't you? A. For my own purposes, yes.

Q. And that holding company is the plaintiff here, isn't it? A. Yes.

Q. So at the time you asked Frankenberg to hold the key, thereby creating the usufruct, you were carrying

937 out what you had originally told your father was your intention? Isn't that right? A. No, you can't say that, because at this time most of these securities were not yet in the corporation.

Q. Well, in so far as the securities were in the corporation, you were carrying out your announced intention? A. In the corporation in Overseas, where at the time the gold coins valued 6.4 million Swiss francs, the main value in the corporation.

Q. Will you answer the question? A. Would you please read it?

The Reporter (reading): "Question: Well, in so far as the securities were in the corporation, you were carrying out your announced intention?"

Mr. Burling: At this time I ask plaintiffs—well, first I ask that the document be marked for identification Defendant's Exhibit 47-A.

Mr. Gallagher: No objection.

(The documents referred to were marked Defendant's Exhibits 47 and 47-A for identification.)

By Mr. Burling:

Q. Did you answer the question after the reporter read it, Mr. von Opel? A. The part of the values there at this time in Overseas.

938 Q. But that isn't an answer, is it? In so far as the proceeds had by 1935 found their way into Overseas, then the asking of Frankenberg to hold the key for your father was a carrying out of what you told your father you would do, on October 5, 1931? A. It was a part of my original intentions, yes.

Q. Now, I show you Defendant's Exhibit 47-A and ask you if that is a cable sent by you. A. Yes.

Q. And it is sent by you from New York to Adler and Company, or to the cable name for Adler and Company in Zurich, isn't it? A. It is addressed to Adler and Company, yes.

Q. And it begins, does it not—

"Overseas was instrumentality for executing gift agreement"—

Is that statement correct? A. Yes—was the instrument used for purposes of gift agreement, I would say.

Q. And it goes on to say, does it not?—

"Therefore my assignment 1932 was not in trust because made without right to reclaim, since any demand of return would have frustrated concentration and safeguarding of his sister's rights demanded by my father."

939 A. There is a point in between, as far as I understand this cable.

Q. Well, will you read it? Will you translate it and read it as you understand it? A. I think there is a point between the word "Rueckforderungarecht" and "durch."

Q. Well, will you read it, as you understand it, in English. A. It says, "My assignment 1932 is no trust, because there is no right to reclaim."

Q. Go ahead, please. A. "Through reclaiming said concentration and security intended by my father and for my sister, would have been made impossible."

Q. Does it refer to security intended by your father, or security of rights demanded by your father? A. Rights demanded by my father, those stipulations of the gift contract.

Q. That refers to rights which your sister got and other rights which your father demanded, doesn't it? A. Yes, I at the time even thought my sister had some rights to it. And you expressed the same opinion. I now found out that the accounting, that it was only an accounting provision. And I close saying—

"If you share this legal opinion, please tell me
940 so"—no—"please inform us the American lawyers."

It speaks about my opinion on these legal matters, which I wanted to have checked by the Swiss lawyers, to see if they were right or not.

941 By Mr. Burling:

Q. Will you look once more at Defendant's 46-A, and I invite your attention to a pencil stroke at the place of signature. Can you identify that? Is that not Dr. Frankenberg's mode of indicating his initial? A. I never have seen that before. That is just a scratch. It might be even in here—

Q. You cannot identify it? A. No.

Mr. Burling: Excuse me, Your Honor, I seem to have the wrong document. (Pause) I have the right document. I just have two different translations.

Mr. Ingoldsby: Is that 48?

Mr. Burling: This is 46-A I am inquiring about.

By Mr. Burling:

Q. Will you look in the middle of this cable, Defendant's 46-A, and see whether it is correctly translated: "—this method was necessary and intended for that reason alone because all assets acquired for sold Opel stock had to be consolidated and safeguarded in the Overseas as executive organ of gift contract between Geheimrat Opel and Fritz Opel." A. Yes, that's what it says.

Q. Did you ever have any talk with Dr. Frankenberg as to whether Overseas was the executive organ of
942 the gift contract? A. I explained to him in general what the gift contract stipulated, and I further explained to him the situation we were confronted with in Germany, and said I wanted to be helpful to my father.

Q. When was it that you learned for the first time that your father did not wish to make Frankenberg his agent? A. That was in the summer or fall of 1935.

Q. And what did your father say to you at this time, and what did you say to him? A. I reported to my father what I had done, and I gave him the reasons why, and I

asked him whether he consented to my actions. He told me no. He said he wanted to do the opposite, that he wanted to get rid of Niessbrauch once and for all, because otherwise it would cause new trouble every year not only with the foreign exchange control, but also in regard to income taxes and property tax declarations.

Q. And he said to you that he would not consent to have Frankenberg hold the key to the box as his agent, is that right? A. Yes.

Q. You are perfectly clear about that? A. Perfectly clear, yes.

Q. What month did you say this took place in? A. I couldn't give you the exact date.

Q. As close as you can get to it. A. It was summer or fall of 1935, shortly before the first letters were written to the German Government renouncing these Niessbrauch.

Q. And at that time you understood, did you not, that Frankenberg was not holding the key as agent for your father? A. After my father informed me that he didn't want Dr. Frankenberg to act as his agent, I, of course, in turn informed Dr. Frankenberg.

Q. Promptly? A. I don't know the exact date.

Q. Did you inform him promptly? A. I informed him.

Q. Promptly? A. Promptly, I couldn't tell you any specific date. I mean, this is 12 or 15 years ago.

Q. And did you also inform John W. Davis that your affidavit was in error, and that Frankenberg was not holding the key, and that your father did not have the usufructory interest? A. At this time I think—

Q. Did you or did you not? A. I do not think so, because it was not necessary.

Q. You had filed an affidavit in June in which you swore in a court that you had mere legal title, that the usufruct was valid, that Frankenberg was holding the key to the box in which the Uebersee shares were held, as your father's agent? A. Yes.

Q. Now you say after the conversation with your father you learned that your father was—that Frankenberg was not your father's agent, there had been no valid delivery of possession, that there was no in rem usufruct? A. Correct, yes.

Q. Did you do anything at all to correct the affidavit that you had filed in the United States District Court for the Southern District of New York? A. That—

Q. Did you do anything? A. No, I did not do anything at this time because at this time the court was through—it was through the courts.

Q. You know very well that is not so, do you not? A. I think so, yes.

Q. Are you not aware that John W. Davis argued in the United States Circuit Court of Appeals for the Second Circuit in 1936, telling the Court the facts to be as stated in your affidavit? A. As I remember, this action undertaken by John W. Davis had nothing to do with any Niessbrauch, it was a mere level argument on Constitutional rights or safeguards.

Mr. Burling: Your Honor, I am taken by suprise,
945 but I wonder if I could send to obtain 83 Federal 2nd, which will establish this point.

The Court: You can do that at any time.

Mr. Burling: Thank you, Your Honor.

By Mr. Burling:

Q. You knew very well, did you not, that the argument was being made in the gold case; in fact, the principal argument was that the beneficial interest in the gold was in your father, who was not in this country, and that since he was not here, and was not doing business here, he had a right to export the gold. A. Yes, I saw that it was a constitutional question.

Q. Did you or did you not understand that to be the

issue? A. No, I think I myself did not at the time understand that properly.

Q. Did you not know that the general Constitutional question as to the validity of the gold embargo act of March 9, 1933, had been decided by the United States Supreme Court at least two years before your case was argued in the Second Circuit? A. There were ten days between the purchase of this gold and the time when export license was needed.

Q. Won't you answer my question, Mr. von Opel? A. I am trying to answer it.

946 Q. I asked you, did you not know that the Constitutional question as to the validity of the gold act had been decided by the United States Supreme Court two years before John W. Davis argued this?

Mr. Ingoldsby: Your Honor, I think that the question assumes a false premise, because there are two gold acts. There is the gold act of 1933, and there is another gold act of 1934. And I think that the case of Norman against the Baltimore and Ohio Railroad, if I am not mistaken, sustains only the constitutionality of the act of 1933.

The Court: You are talking about something else. Do you object to his question, is that it?

Mr. Ingoldsby: Yes, I do, Your Honor.

The Court: I think if the witness understands his question, it is perfectly proper for him to ask him. If he does not, he will say so.

The Witness: What was the question?

By Mr. Burling:

Q. Did you not know that the Constitutionality of the gold act had been affirmed at least two years before by the Supreme Court of the United States? A. I don't remember that, no.

Q. Well, you understood, did you not, that the main,

at least an important part of your argument—that is, Uebersee's argument—in the Second Circuit in 1936
947 was that the beneficial interest in the gold was in your father because of the usufruct. A. I don't think so. I think it was a legal question on Constitutionality.

Q. You don't think that the question of who owned the gold, that is, whether you had the beneficial ownership—A. I think only—

Q. Please don't interrupt me. A. Pardon me.

Q. You do not think that there was any issue as to whether you held the gold or whether your father held the gold beneficially? A. At the time of the first application I think it had some bearing on it, but later on not.

Q. At any rate, you took no steps to inform either Mr. John W. Davis or Mr. Isidor Kresel, who were your attornies in the gold case, that you found that your affidavit was entirely wrong as to who had the beneficial interest in the gold? A. I don't know at what time I informed Dr. Frankenberg.

Q. I did not ask you a word about Dr. Frankenberg, Mr. von Opel, I asked you about John W. Davis and Isidor Kresel. A. No, I did not inform them.

Q. To this day you have never informed John W. Davis that the affidavit you filed of June 7, 1935 you learned
948 to be incorrect later that summer, is that not right? A. I wouldn't use the word "incorrect."

Q. Well, you said in your affidavit, did you not, that you had mere legal title, that your father had the beneficial interest under a usufruct, that the shares had been delivered to Frankenberg as your father's agent, did you not? A. That was the legal opinion of my lawyers. I did not write the affidavit.

Q. You did not think John W. Davis knew where the key to the box was? A. I stated to John W. Davis the facts.

Q. That's right. You stated the facts, and you stated to

him, did you not, that you had mere legal title, that your father had the beneficial interest—let me finish please—under the usufruct, and that the key had been delivered to Frankenberg as your father's agent? That is what you told Mr. Davis, is it not? A. He certainly wouldn't take my legal opinion. It was a gift contract, and let him read the gift contract and study it. I didn't advise John W. Davis on what was the legal—

Q. Of course not, Mr. von Opel, but you advised him as to the facts, did you not? A. Yes, definitely.

Q. Thank you. And you told him that you had delivered the key of the box to Frankenberg as your father's
949 agent? A. My father told me he didn't want him.

Q. Didn't you? A. Yes.

Q. And that question of fact, whether Frankenberg was or was not your father's agent, you understood to term it whether it was or was not in Niessbrauch, did you not? The answer to that is yes or not. A. You are using the word Niessbrauch again, and to which Niessbrauch you mean. There is a right in rem and there is a right in personum.

Q. Whether or not there was a right in rem was determined by the fact of whether your father accepted or did not accept Frankenberg as his agent. A. It is right in—

Q. Is that not right? A. Yes.

Q. So you understood in 1935 and 1936 that the question of fact of whether Frankenberg was your father's agent or not determined, ultimately, whether you had a right in rem to the gold or whether that right in rem was your father's. A. You are asking me for a legal opinion.

Q. I am not. I am asking you if you did not understand that legal fact in 1935. A. No, I didn't see that clearly at that time.

Q. You did not have any understanding that it
950 was important to tell John W. Davis that your affidavit was in error as to the fact of Frankenberg being your father's agent, is that your testimony? A. I

think at the time John W. Davis went into the Second, into the Court of Appeals, that didn't play any part in the entire action. That is what I understood.

Q. Although you are not a lawyer, you determined that it was not necessary to tell Mr. Davis of this error in your affidavit, is that correct? You understood that your affidavit was part of the record before the Circuit Court, did you not? A. Affidavit was made for an application.

Q. Will you answer my question, please? A. I didn't know those.

Q. You never saw this book (indicating)? A. I saw this book later, after everything was over, and I always called it the most expensive book I ever have seen.

Q. I hope I will be able to agree with you, Mr. von Opel.

Mr. Burling: I ask that two more documents be marked the next numbers.

(Accordingly, a letter to Dr. Gros dated August 2, 1935, and its translation were marked Defendant's Exhibit 48 and 48-A for identification.)

951 By Mr. Burling:

Q. Will you examine Defendant's 48-A, please, and state whether that is a letter which you wrote to Dr. Gros on August 2, 1935? A. Yes, I see it is the answer.

Q. It is a letter you wrote to Dr. Gros? A. Yes, it is.

Q. Thank you. Where were you when you wrote it? A. I was at the time in Germany.

Q. Will you state where? A. In Westerland.

Q. And where is that? A. That is on the island of Sylt.

Q. And that is in the North Sea? A. Yes.

Q. What is Haus Kliemann. A. That is a private house there, where I had a furnished room.

Q. This is a reply to another letter from Dr. Gros to you, is that your opinion? A. Yes.

Q. Do you say as follows: "Your argument that a usufruct had not yet been created did not seem very effective to me at the time, nor do I believe that your opinion will prevail today." Will you state what opinion of Dr. Gros' you were referring to? A. I was referring to Dr. Gros' opinion that in 1934, at the time of the criminal proceedings, we should have tried to fight that out on a legal basis, and I at the time was of the opinion that legal arguments didn't help, it was the time of the blood purge, thousand people killed, and I thought it better to give in at the time.

952

Q. We turn over about two paragraphs. A. Which paragraph?

Q. About two paragraphs. I am going to read you in English. See if you can find the German: "From a purely legal point of view." A. Oh, the following paragraph.

Q. "From a purely legal point of view the situation, I think, is such that he is not allowed to waive any usufruct which has accrued without a foreign exchange license." Will you explain to whom you are referring when you say he is not allowed to waive? Who was not allowed to waive? A. My father. I am speaking about the probability that an actual payment would be made.

Q. Was it your opinion in 1935 that if a valid usufruct had been created, your father could not waive it without a foreign exchange license? A. No, I didn't say that. I say here in this sentence, if actually a payment would be made, he could not waive this payment under the foreign funds control.

953

Q. Is not the translation of it as follows: "From a purely legal point of view the situation, I think, is such that he is not allowed to waive any usufruct which has accrued without a foreign exchange license." A. You leave out the most important word in the sentence, which means angefallenen. That means to say the proceeds, the

money coming, derived from the usufruct. And I was of the opinion, and still am, that any payments actually credited to my father, he could not waive the right to claim them under the foreign currency regulations.

Q. I used the word "accrued." The translation which we have, and which the parties have stipulated is correct, reads, "He is not allowed to waive any usufruct which has accrued without a foreign exchange license." A. I think the word "accrued" is not the proper translation.

Q. At any rate, it is. A. It says here angefallenen; it means, actually paid in.

Q. Or arisen? A. Arisen, no, the word angefallenen means an actual payment.

Q. Well, the plaintiffs have stipulated, Mr. von Opel, that this is a correct translation.

954 At the time you wrote this letter you had learned from your father, had you not, that there was not any usufruct at all—that is, any in rem usufruct—because he would not accept Frankenberg as his agent? A. I think that was prior to this date.

Q. You already learned this. A. No, no, no. I wanted to say the opposite. I think the discussion with my father took place after this letter. I think, as I said before, in summer or fall, 1935, it was in middle summer, I think, the actual waiving took place about several weeks thereafter.

Q. Did you not testify that as soon as you went back to Germany after having talked to your lawyers in New York about the gold case, you went and told your father about having given the key to Frankenberg? A. Yes, at the first opportunity I saw him, and I think I saw him at the time we filed this report to the German Government.

Q. But before you went to see your father, you went to the Island of Sylt, which is a pleasure resort, is that right? A. Yes.

Q. And took a furnished room there? A. Yes.

Q. You did not go directly to your father and tell
955 him what you had done, and that the usufruct had been brought into existence? A. I don't know

whether he was present in Germany at the time. I don't remember that.

Q. As a matter of fact, if you examine this very document, you will see that your father was in Berlin at the time, will you not? Look at the last sentence. Does it not read: "My father is at the moment still in Berlin. You might take the opportunity to discuss with him the different questions I raised in this letter, especially the usufruct question." A. Yes.

Q. So you mean that you were going to have Dr. Gros talk to your father about the usufruct question while you were sitting in a summer resort, without taking the trouble yourself of going to Berlin and telling him what you had done in Zurich and New York? A. I think that was Dr. Gros' business to attend to matters inside of Germany, that was not so much my concern.

Q. Had you told Dr. Gros at this time that you had delivered the key to Frankenberg as agent for your father? A. Dr. Gros knew nothing about that.

Q. So how could Gros talk intelligently to your father about the usufruct question when you had taken the important step of delivering the key to Frankenberg
956 as your father's agent? A. It was a mere legal question, to explain to the German authorities the gift agreement, and the stipulation.

Q. I know, it was a legal question, but Dr. Gros could not do that without knowing about the facts, could he? A. He learned the facts shortly thereafter.

Q. But here you are, while you are at a summer resort, the Island of Sylt, writing a long letter, a six-page letter to Dr. Gros, suggesting that he talk to your father about the usufruct question, and yet neither Gros nor your father had been told at this time that you had given the key to Frankenberg to hold, as your father's agent. A. As I have stated—

Q. Is that statement a fact? A. Yes.

Q. Now, will you explain how you thought your father

and Gros could talk intelligently about the usufruct when neither of them knew the important fact that you had brought it into being by delivering the key to the box to Frankenberg? A. At this time I did not know what action my father would take, and I advised Dr. Gros to inform my father about his legal opinion on the matter.

Q. But how could he have a legal opinion without knowing the facts? A. He knew all the facts necessary.

Q. But he did not know about your delivery of the
957 key to Frankenberg, did he? A. That was of little interest to the German Government.

Q. Well, would it not make all the difference between whether a usufruct had arisen, and whether one had not arisen? A. The question is—

Q. Wouldn't it? A. I don't get your question.

Q. You say you asked Dr. Gros, a lawyer, to discuss with your father the legal question of the usufruct, and you have testified over and over again that you understood that the usufruct would be created by delivering the key to Frankenberg, as your father's agent, and you testified that you thought that your father would make Frankenberg his agent, and yet you did not tell either your father or Gros this essential fact. A. I was about to see my father shortly thereafter.

Q. Why did you write to Gros, telling him to go and talk to your father without telling him the essential facts? A. So that he would get Dr. Gros' unbiased opinion on the matter.

Q. What conceivable good would Dr. Gros' unbiased opinion on a matter be if he did not know the essential facts of the matter? A. That was only a small part of the entire problem, Mr. Burling. We were concerned—

958 Q. We all agree that Mr. Gallagher is a very learned man. Do you think that I would pay him

very much for his opinion as to the validity of the title to my house, right this minute? I am trying to make you understand what my questions are about. That is why I ask you this hypothetical question. Do you not understand that Mr. Gallagher's opinion as to the validity of title to my house is worthless because he does not even know where my house is, or whether I have title or whether I rent it? Is that not clear to you? A. Yes.

Q. And is it not also clear to you that a lawyer's opinion is worth something only if he knows the facts which he is talking about? Is that not clear to you? A. In this specific—no, it is not.

Q. It is not clear to you that a lawyer has to know the facts in order to have an opinion that is worth something? A. I didn't say so, Mr. Burling.

Q. Is that clear to you, sir? Is it clear to you that a lawyer has to know the facts in order to express an opinion about a situation? A. He has to—

Q. Is that clear to you? A. He has to have the legal background.

Q. Does he not also have to know the facts? A. And I told him the facts.

959 Q. Where in this letter is there a word about your having—A. I told you so, that I saw him shortly thereafter.

Q. Who? A. Dr. Gros and my father.

Q. But on this occasion you suggest that Dr. Gros talk to your father. A. About the entire matter, yes.

Q. But you do not tell him the most important fact in the entire matter, do you? A. My father was the one who had to make up his mind, it was not myself only.

Q. But your father did not know what you had done with the key to the box at this time. A. At this time he didn't know yet, no.

Q. And Gros did not know, and you did not go to Berlin to tell them? A. No.

Q. Thank you. I will go on now. Will you look at the

paragraph before the last. Do you see the sentence, "Nobody would regret that more than I myself, for I, too, am waiting for my 20 per cent." A. You cannot pull that out the entire—

Q. I asked you if you saw it. You see it, do you not? A. Yes, certainly.

960 Q. Will you point out to me in German? A. Here (indicating), and here.

Q. Does it not say "meine"—what is this? A. Percentages.

Q. The word before that is "meine"? A. Yes.

Q. So 20 per cent of the income you regard as "meine?" A. Yes.

Q. And "meine" is the German word for "mine?" A. Yes, definitely.

Q. Whose were the other 80 per cent? A. The other 80 per cent had to be accounted for with my sister.

Q. And that accounting was to take place when your parents were dead? A. Yes, as it is stipulated in the last will.

Q. Who owns the other 80 percent until that event should take place? A. I could really dispose of them.

Q. Whose were they? A. They were mine, of course.

Q. 80 per cent is yours, but you are still waiting for "my 20 per cent?" A. You are mixing up an accounting figure with the actual income and ownership. You can't throw those two things together.

961 Q. Did you ever tell any agency in the year 1942 that your father had a usufruct?

Mr. Ingoldsby: I object. The question is much too broad, "Did you ever tell any agency." I think if he intends to impeach the witness, he should establish—

The Court: If he has any recollection of it, he may answer.

The Witness: Should I answer the question?

By Mr. Burling:

Q. Yes. A. I don't recollect that.

Q. You were questioned by the Miami hearing board on this matter, were you not? A. Yes. I don't recollect any details.

Q. Was this question asked you, and did you give this answer, at page 94: "Why did you want the total of this 1,250,000 in gold to be vested in the name of this corporation?

"Answer: Because I wanted it—you see, I spoke about this usufruct, about this income, this 80 per cent, the usufruct agreement. My father was entitled to part of the income, and I knew I would not keep this gold because it was only gold temporarily. I knew I would acquire stock of some corporation, and that is the reason that everything was put over into this corporation's name."

Is that correct? A. Yes.

962 Q. So in 1942 you stated that your father was entitled to part of the income. A. Pardon me, that refers to 1934 or '5.

Q. You were being questioned— A. About the gold, in connection with the gold.

Q. You were being questioned in 1942. A. In connection with the gold.

Q. The transaction that you testified to in '42, "My father was entitled to part of the income." A. At this time of the gold, yes.

Q. Your father was entitled to it, yes. A. It was the gift agreement, certainly.

Q. That is, he had title to part of the income, is that right? A. He could, if he so wanted, before he waived, restore up to 80 per cent of the income, yes.

Q. You did not say in your gold case affidavit, did you, anything to the effect that you were to have full use of a hundred per cent of the income unless your father were to demand a part of the income? You did not say a word about that in that affidavit, did you? A. That is a gift agreement, I did not explain the stipulations of the gift agreement.

963 Q. There is nothing that appeared in the face of the gift agreement that indicates that your father is not to have an immediate usufruct, and immediately to have 80 per cent of the income, is there? A. I can't read that out of the gift agreement. It means that he has—

Q. There is not a word in it that indicates, is there, on the face of the instrument, that your father was to receive the income only if he demanded it, and that if he did not, you were to have the right to a hundred per cent? A. No, you have to—the instrument is not quite clear on the point, but it stipulates what has to be done about those 80 per cent, and it therefore indicates that my father never wanted to draw anything.

Q. It does not indicate on its face, does it? A. Certainly. Otherwise, all those prohibitions would not be in it.

Q. Do you now testify that from the face of the gift agreement one can see that you had a right to a hundred per cent of the income unless your father should make a demand? A. You are speaking about the face of the gift agreement. What do you mean by that?

Q. What the words say, the text. A. It is not only what the text says, but what the text implies, and what the intention of the parties is, all those factors have to be taken together.

964 Q. My point now is that in your affidavit you did not say a word about the fact that you had the right to a hundred per cent of the income unless your father demanded 80 per cent, and you then replied, "The District Court could not tell that from the gift agreement." I now say they could not, because there is nothing on the face of the agreement that spells that out. Now, do you agree with me? A. I did not interpret the gift agreement to any American authorities.

Q. Yes, but you did say that you had mere legal title plus 20 per cent of the dividends and interest, did you not? A. That is what the lawyers explained to me.

Q. Now you say you understood on October 5, 1931, that you were to have a right to a hundred per cent of the income unless your father made a demand, is that right? A. I didn't say that, on October—which date?

Q. October 5, '31. A. October 5, '31, you mean that is the date of the gift agreement?

Q. Yes. A. What did I say, sir?

Q. I wasn't there. I am asking you what you said was said there. Is it not true that you have testified before that you and your father agreed that you were to have the right to a hundred per cent of the income subject to an accounting at his death, unless he made a demand for 80 per cent of the income? A. I said this morning that, when you spoke about the income and income payments, that I, of course, had to pay the entire income as long as it—

965

Q. Will you please answer my question, Mr. von Opel? A. I didn't quite get it.

Q. Did you not say this morning, or yesterday, that you and your father agreed that you were to have all of the income subject to an accounting at your father's death, and subject also to his right to demand up to 80 per cent of the income? A. That is what is stipulated in the contract, yes.

Q. That is certainly not the terms of the contract. But did you say that that was agreed between you and your father? A. I said that there was no paragraph in the contract preventing me from using the entire income.

Q. But you did not see fit in making out your gold case affidavit to say a word which indicated that you had the right to use the entire income. A. I only gave the gift contract to the lawyers.

Q. You did not say that you had the right to the entire income, did you? A. And it is not so stipulated in the gift contract. It is only implied.

Q. You did not say that it is implied. You said, did you not, "Before accepting, however, I protested to my father

against the insertion of the restriction, the reserva-
966 tion of usufruct," etcetera, "which left me with a mere legal title plus 20 per cent of the dividends and interest. My father, however, insisted on these terms." A. Yes, he wanted an accounting with my sister.

Q. But will you not agree that any reasonable and fair-minded man would read this as a statement by you that all you had as a beneficial interest was 20 per cent of the income? A. That is what it stipulated in the contract, that I have to account with my sister for 80 per cent of it.

Q. After your father's death? A. The gift contract does not mention a single line how and when I have to pay my father. If he had wanted an income, there certainly would be a specific stipulation that I would have to account for him at the end of each business year, and that he then within four or six weeks would have to ask for payment. Nothing of this sort is in the contract.

Q. You knew, did you not, that also filed on behalf of the plaintiff here in this gold case was an affidavit by Wronker-Flatow? A. I think so.

Q. You read it before it was filed, did you not? A. I don't think so.

Q. Did you ever hear the expression "Consortium O"? A. What is it, please?

967 Q. Did you ever hear the expression, "Consortium O"? A. I think that was used in connection with some loan by the Adler Bank.

Q. Is it not the fact that quite large accounts were carried in the books of Uebersee under the heading Consortium O? A. At what time, Mr. Burling?

Q. I don't know, at any time, so far as you know. A. That is possible.

Q. To the best of your knowledge, were there accounts for Consortium O, or weren't there? A. That is possible.

Q. Of course it is possible, it is possible that I had an account in this book. A. I don't remember the books of Uebersee, any phase of it.

Q. The name Opel begins with the letter "o", does it not? A. Yes.

Mr. Burling: I ask that a photostat of the Aasland Verwaltungs-Conti Conto Corrent, which we translate "Foreign Management Accounts—Current Accounts" be marked for identification as one number, and then the sheet A, B, C, etc.

(Accordingly, the above-referred to documents were marked Defendant's Exhibit 49A through J, inclusive, for identification.)

968 By Mr. Burling:

Q. What does the word "Consortium" mean in German? A. It is a German word.

Q. What does it mean? A. You mean in English?

Q. No, as used in German, what does it mean? A. The English translation—

Q. Were the books of Uebersee kept in English? A. No. If you are asking me to explain what the word means—

Q. That is right, please do. A. I'm not quite clear on this point. I think this name was used by Adler Bank.

Q. Just in general, if you read the word "Consortium" in a German book, what would it mean to you? A. Mostly it means large assembly of people.

Q. Does it not mean syndicate? A. A bank might use it in this way.

Mr. Burling: I ask the plaintiffs to concede.

Mr. Gallagher: No objection.

Mr. Burling: I offer in evidence Defendant's Exhibit 49-A through J, which are photostats of what in English is a book called "Foreign Management Accounts-Current account."

(The documents above referred to, heretofore identified as Defendant's Exhibit 49-A through J, inclusive, were received in evidence.)

969 By Mr. Burling:

Q. I ask you to hold that and then to look at page 16. In your years of business experience you understand simple bookkeeping, do you not? A. Not this kind of bookkeeping. It is rather complicated and old-fashioned.

Q. Would you look at page 16 and see if there is not, if there was not credited to Consortium O, between September 12, 1932, and September 30, 1934, dollar amounts equaling $2,613,840.21? A. Which entry is it on this page?

Q. I will ask my accountant. (The entry was pointed out to the witness by Mr. Baum.) A. You spoke about '32?

Q. Between the years '32 and '34. A. Yes, every year a different entry.

Q. Is not the total the figure I gave you? A. I don't think that one can total all the years. It must have been the total of '34.

Q. All right, that settles that. Does that not indicate that in the year 1934 Consortium O was credited $2,613,840.21? A. And also debited at the same time, if I understood it correctly. Isn't that just an offset account?

Q. Will you show me what the withdrawals are?

970 A. I don't understand it. I would have to ask a bookkeeper.

Q. Is it not the fact, Mr. von Opel, that Consortium O is the code name for the 80 per cent of the income which was credited on Uebersee's books to your father, or your father and mother under the heading Consortium O? A. How can there be an income of 2.6 million. No, you are entirely mistaken.

Q. Could there not have been over a period of three years? A. I think that this name was used in the beginning before Frima was formed.

Q. What was it used for? A. Just as a name, an account name.

Q. An account name for what? Apparently I made an accounting mistake, myself. Is it not true, Mr. von Opel, that Consortium O represents that part of the principal which was reserved under the usufruct provisions of the gift agreement? A. Definitely not. It's fully out of the question.

Q. And what, to the best of your knowledge and belief, did the account represent? A. It was just an account name or number. Some banks use numbers, other banks use names.

Q. Do you think the words Consortium O were
971 selected by whimsy? A. I do not know who put that name into it; I didn't do it?

Q. You have no explanation at all to offer as to what this item on the books is of the plaintiff? A. I have to look it over. As far as I could see, it is an offset item, debited and credited.

Q. The original is in the possession of your counsel. Will you agree to do so tonight, please? A. Yes, I will be pleased to do that.

Q. Is any person, so far as you know, who is familiar with the books and records—that is, who kept the books and records of the plaintiff corporation—going to testify in this case? A. The bookkeeper is in Switzerland, Mr. Gaeng.

Q. Will you answer my question, sir?

Mr. Gallagher: Just a moment. Your Honor, we will advise the Government at this time that we have a Swiss accountant who is going to testify with regard to the books.

Mr. Burling: May I inquire of counsel if this Swiss accountant has kept the books?

Mr. Gallagher: No, but he has studied all the books, and he will be able to explain any discrepancies or inaccuracies.

Mr. Burling: I am not inquiring as to discrepancies or inaccuracies, I want to know what the Consortium O account was. I will ask the witness.

By Mr. Burling:

Q. Is any witness going to testify here, so far as you know, who will be in a position to testify of his own knowledge as to what Consortium O represents in the accounts? A. We can find out every detail you like, Mr. Burling.

Q. I want to know if anybody is going to testify to that under oath. A. I don't know what my lawyers intend to do.

Q. You have been working with them daily, and often nightly for weeks, have you not? A. Yes.

Mr. Ingoldsby: We will certainly agree that the accountant is going to testify, and he will be able to identify the account.

Mr. Burling: I can identify the account myself, if Your Honor please. I am trying to establish that the plaintiff corporation is failing to bring any witness whomsoever who can tell us what Consortium O means.

Mr. Ingoldsby: I do not happen to know offhand, but as soon as I find out, we will certainly agree.

Mr. Burling (Handing document to the Clerk): May this be marked.

(Accordingly, a photostat copy of a document signed Overseas Finance Corporation, dated November 27, 1935, was marked Defendant's Exhibit 50 for identification.)

Mr. Burling: I ask for a concession as to Defendant's Exhibit 50-A, which is a photostat of a document signed Overseas Finance Corporation, dated November 27, 1935, taken from the books and records of the plaintiff.

Mr. Gallagher: Yes.

By Mr. Burling:

Q. I show you 50-A and ask you if you have ever seen that. That is a letter from the Overseas Finance Corporation, is it not, to the Swiss Federal Banking Commission in Berne? A. Yes.

Q. And does it not recite in numbered paragraph one, "The entire capital of our company comes from a single group which also has a controlling interest in the capital stock"? A. Yes.

Q. Will you identify the members of the single group therein referred to? A. That was I, myself.

Q. Now this time you are a group, is that it? A. Yes, in banking terms this word is very often used.

Q. It did not mean the Opel family? A. No, sir, it definitely did not.

Q. Going back to October, 1931, you sailed on the 974 Europa, did you not? A. Yes.

Q. And you know, do you not, that your father made a long-distance telephone call to John Thomas Smith the 8th of October, that is, the day after the Europa left Bremerhaven? A. I don't know, it's possible.

Mr. Burling: Will you mark this, please (handing the Clerk a document).

(Accordingly, the document above referred to, a telegram signed Wilhelm von Opel, was marked Defendant's Exhibit No. 51 for identification.)

By Mr. Burling:

Q. I will read you a telegram, the genuineness of which has been admitted by the plaintiff.

"John Thomas Smith"—and then the cable address of General Motors, New York. "Unless advised otherwise, telephone you the 8th 10 a. m. New York Standard Time." —Signed, "Wilhelm von Opel."

Does that refresh your recollection as to whether you ever heard that your father had called Smith while you were at sea? A. There was an exchange of wires around this time. This telephone call I don't remember. I was at sea, as you say.

Q. Did either Smith or your father ever tell you what the substance of this telephone call was? A. I don't remember. It must have some reference to those 600
975 Opel shares. At the time, as you know, we tried to get General Motors to put a gold clause into the escrow agreement, and my father assisted me in this endeavor.

Q. And you landed in New York on the 13th, is that right? A. Yes—I am not sure of the date—13th, 14th, around this time.

Q. And you first went to the National City Bank, as you testified? A. Yes.

Q. And then you went and talked with John Thomas Smith and asked for a gold clause to be put in the escrow agreement? A. Yes, some safety against the devaluation.

Q. You did not tell Mr. Smith, did you, at this time, about the gift? A. No, I thought so previously, but now I find out through this wire from the bank that it was not General Motors but the National City Bank. I asked about technicalities.

Q. On October 17 you put the shares to General Motors? A. Yes, I did.

Q. And that was under the power of attorney which we have previously discussed? A. Yes, sir.

976 Q. Then is it true that you opened a series of accounts on October 19 with the City Bank Farmers Trust Company? A. A series of accounts? I don't remember that.

Q. Or else one account broken down into various subaccounts? A. Oh, that was much later, Mr. Burling. It was not at this date. You spoke about October 20 or so.

it was done a few days later. I guess it was around October 28, if I am not mistaken.

Q. Will you examine plaintiff's 17 and see if that refreshes your recollection as to when you opened an account or series of accounts at the City Bank Farmers Trust Company? I gave you the wrong exhibit number, I am sorry, it is plaintiff's 70. That is your signature at the bottom, is it not? A. Yes, sir.

Q. Will you examine the date of that? A. October 19.

Q. Does that refresh your recollection as to when you opened the accounts? A. Yes. But that was secondary accounts, it was not yet the transfer account.

Q. Now, is it true that whenever these were opened one account was called Fritz von Opel main account principal? Do you recall? A. Yes.

977 Q. And one account was called Fritz von Opel special income account? A. Yes.

Q. And is it not true that instructions were given the bank that income on any securities which were deposited in these accounts was to go 80 per cent into the principal account and 20 per cent into the Fritz von Opel special income account? A. For accounting purposes, yes. May I say, this date, October 19, does not refer to the opening of an account. It is kind of an increment in case an account should be opened. The date on here is November 6, 1931.

Q. You could not have opened it on November 6, 1931, could you? A. That was the date.

Q. You did not open that account on November 6, 1931, did you? A. That is apparently the date at which this instruction—

Q. But you did not give the instruction on that date, did you? A. As I tried to tell you, the first account as to my best recollection was opened around October 28.

Q. At any rate, this date in November is clearly wrong, is it not? A. I don't know.

978 Q. You could not have given instructions in the New York Bank on November 6, could you? A. I think this page does not bear my signature.

Q. I just say you did not do anything at the City Bank Farmers Trust Company on November 6, did you? A. I think that was filled in by the bank.

Q. Won't you answer my question, please? A. I didn't do it, I don't think so.

Q. You could not have done it on that date. A. No, I was not there.

The Court: Have you about finished that subject?

Mr. Burling: If I could ask about two more questions, I will be through with these accounts entirely.

By Mr. Burling:

Q. Did you not instruct the bank at this time to prepare duplicate statements on the main account, one of which was to be sent to your father, and one of which was to be sent to you? A. In regard to the income, yes. May I explain this matter a little further.

Q. Yes. A. The payments from General Motors in return for the sale of this 600 Opel shares went into an account for Wilhelm von Opel, which I had opened with the second additional power of attorney. This money

979 remained—let's try to put it this way: I gave instructions already on October 1928 that everything which later on in the middle or the end of October should come into this account should immediately be transferred to my own account. So I do not understand, as there was no money available at the time, how an account could have been opened on October 19. There must be some mistake. The transfer to my account took place after November 16, 1931.

Q. In any event, with regard to the main account you executed an instrument, did you not, authorizing the bank

to follow any and all written instructions given the bank by your father, Wilhelm von Opel, for the disposition of any of the securities deposited. A. Pardon me, from which power of attorney are you reading?

Q. Did you not sign an instrument handed to the City Bank Farmers Trust Company in which you say, "I hereby authorize and request you to follow any and all written instructions given by Wilhelm von Opel in respect of the sale or exchange or other disposition of any or all of the securities which you as custodian or otherwise now or in the future may hold for my account," etcetera, "Very truly yours, Fritz von Opel."

Mr. Ingoldsby: May I ask whether or not you are reading from a bank form or from something prepared by Fritz von Opel?

980 Mr. Burling: You may inquire, Counsel.

Mr. Ingoldsby: That is what I am inquiring.

Mr. Burling: If you will consult documents which have been at your disposal for months, you will find the answer to your question.

Mr. Ingoldsby: I have had so many documents at my disposal for so many months—

The Court: He may look at it.

Mr. Burling: I have no more questions, Your Honor, on this topic.

The Court: Did you want to know if he signed this?

Mr. Burling: Yes. (To the Witness) Did you sign this?

The Witness: That is my signature, yes.

The Court: Tomorrow morning at ten o'clock.

(Accordingly, at 4:30 p. m. the trial was adjourned until 10 o'clock the following morning, Friday, December 17, 1948.)

983 Mr. Burling: May I proceed, Your Honor?

The Court: Yes.

Mr. Burling: I ask Your Honor to take notice, at Volume 83, Federal (2d), 225, the case of Uebersee Finanz-Korporation against Rosen, et al., which was decided—

I am sorry, Your Honor, I have forgotten the date.

The Court: April 6, 1936.

Mr. Burling: Thank you. And thereafter, as appears from 298 U. S. at 679, Uebersee Finanz-Korporation petitioned for certiorari to the Supreme Court, and the Supreme Court denied the petition on May 25, 1936.

I have sent for a copy of the petition for certiorari, if Your Honor please. I don't have it available at the moment.

The Court: All right.

Whereupon, FRITZ VON OPEL returned to the witness and was examined and testified further as follows:

Cross Examination (Resumed)

By Mr. Burling:

Q. As a result of your negotiations with the General Motors officials, in October, 1931, you received payment for the Opel shares partly in cash and partly in stock
984 of General Motors? Is that right? A. Yes, sir.

Q. And the General Motors shares were deposited with the City Bank Farmers Trust Company? A. Yes.

Q. And you instructed the bank to hold these shares subject to your father's further instructions, did you not?

Do you recall, Mr. von Opel? A. They were to be treated under the escrow agreement between General Motors and my father.

Q. No; I am talking about the General Motors shares you received in payment for the Opel shares. A. They were received on an account of my father; and, after two days, transferred to my own account.

Q. But at any rate, when they were first received, you instructed the City Bank Farmers Trust Company to hold the shares subject to your father's instructions? Is that not right? A. Certainly, because there was no other way—

Q. Thank you. Then that is right? A. Yes.

Q. Will you look at Defendant's Exhibit 52 and state whether that is not a document signed by you? A. Yes, certainly.

Mr. Burling: I offer it in evidence.

985 (The document referred to was marked and received in evidence as Defendant's Exhibit 52.)

The Witness: That was the purpose of this power of attorney of my father, to simplify matters.

By Mr. Burling:

Q. I again ask you not to volunteer. Just answer my questions, please.

And on October 21 your father instructed the National City Bank, or informed the National City Bank that you were authorized to do certain things with the General Motors shares and the cash. Is that not right? A. Yes. There was some exchange of wires, and a second power of attorney was given to me, which is not yet a definite one.

Q. I ask you to examine Defendant's Exhibit 53 and state whether that is not a wire giving you additional powers? A. That is more or less a repetition, as I remember, of the first power.

Q. But you recognize this as a power of attorney given

to you? A. Yes; I think more or less a repetition of the first one.

Q. It was a cable received on October 21? Isn't
986 that so? A. It is addressed to the bank, yes.

Q. And this power of attorney limited your power to withdraw the shares, or the securities, so that you could withdraw securities only if you replaced them with the purchase price or with other securities? Is that right? A. Yes; I told you it was just a repetition of the first power.

Q. Is that right, Mr. von Opel?—on October 21 your power of attorney given by your father was limited so that you could withdraw securities only if you replaced them with other securities or with the price? A. Yes.

Q. You did not at this time get a full power of attorney? A. No. I got the full power on October 24.

Q. On October 24? A. Yes.

Mr. Burling: I offer Defendant's Exhibit 53 in evidence.

(The document referred to was marked and received in evidence as Defendant's Exhibit 53.)

Mr. Burling: I ask that a group of twenty photostatic pages be marked as one exhibit, please.

By Mr. Burling:

Q. After you received the full power of attorney,
987 you transferred the cash from the National City Bank to the City Bank Farmers Trust Company? Is that correct? A. Not quite, Mr. Burling. I received the full power of attorney on October 24, and I instructed the National City Bank Farmers Trust that if General Motors would make payment, those payments would have to come in between November 16 and November 24; that

those payments should then immediately, these future payments, be transferred to my own account.

Q. Then at some point there was a transfer to the City Bank Farmers Trust Company? Is that correct? A. I gave this order about three weeks ahead of the time when the proceeds were received.

Q. Wasn't the account transferred to the City Bank Farmers Trust Company? A. You mean, were the proceeds paid?

Q. The entire account, was it not transferred? A. There was no account yet, because payments were not made before November 16.

Q. All right. At some point the account was opened at the City Bank Farmers Trust Company? Is that correct? A. At which point do you mean?

Q. When did you open an account with the City Bank Farmers Trust Company? A. It must have been around the same time.

988 Q. When was that, please? Will you fix the date?

A. I think I gave the order on October 28, if I am not mistaken.

Q. All right, sir. A. And it had to do with those future proceeds.

Q. And you gave instructions, did you not, that one-fifth of the income was to be deposited in one account, and four-fifths in another account? Isn't that true? A. No, that is not correct.

Q. Well, what instructions did you give? A. That one-fifth had to be set aside for me, but no disposition was to take place with the remaining four-fifths. They were not separated. They were kept in the account. Only one-fifth was separated for myself.

Q. One-fifth was set aside for you, and the remaining four-fifths remained in another account? Is that right? A. No—remained in the main account. They were not taken out of this account.

Q. Well, did you not instruct the City Bank Farmers Trust Company in the following words?—

"On the 6th day of each month transfer 20 per cent of income collected to Fritz von Opel Special Account Custodian, with advice to him, and 80 per cent to principal main account, duplicate statements of main account to go to Wilhelm von Opel, Wiesbaden, Steubenstrasse 34,"

989 A. I think you left out part of the statement, because you began to say something about proceeds, and then you continued to say something about accountings.

Q. Did you give these special instructions?—

"On the 6th day of each month transfer 20 per cent of income collected to Fritz von Opel Special Account Custodian with advice to him, and 80 per cent to principal main account, duplicate statements of main account to go to Wilhelm von Opel, Wiesbaden, Steubenstrasse 34"?

A. I don't understand the words "advice to him".

Mr. Ingoldsby: If Your Honor please, may the witness see the entire document, so that the portion is not read out of its context?

The Court: He has a right to see the document he is reading from.

By Mr. Burling:

Q. I show you Plaintiff's Exhibit 70, and call your attention to some words under the printed heading "Special Instructions". A. Yes; that is exactly what I said.

Q. Thank you. A. The 20 per cent set aside for me—

Q. Thank you, Mr. von Opel; that is what I want

990 to know.

When you gave those instructions, it was your understanding, wasn't it, that your father had given you all his interest in the Opel shares? He had given it away?

He didn't have any ownership or title in the Opel shares? A. Definitely not, but—

Q. All right. A. But he had certain rights

Q. But he didn't have any definite title? A. Title—definitely not, no.

Q. Did your father ever tell you that on October 21 he had a conference with Mr. Mooney? A. I heard about it later, yes.

Q. He told you that when you got back to Wiesbaden? Isn't that right? A. Yes, and I think—

Q. Thank you. And you knew Mooney was the president of General Motors Export Corporation? A. Yes.

Q. And you knew that Mooney had direct personal responsibility for General Motors' dealings with Adam Opel A. G.? Isn't that right? A. Only on a management basis. He had nothing to do with this financial dealing.

Q. No; but Mooney was the General Motors man
991 who was in charge of the Opel operation? A. Of the operations, yes.

Q. Now, did your father at any time tell you that in the course of a conversation with he had with Mooney, that in the course of this conversation he told Mooney that he, Wilhelm von Opel, would be willing to retain his interest in Adam Opel A. G. and to agree to hold his share until January 1, 1936, on condition that it be agreed that payment be made in gold rather than in marks?

Did he tell you that? A. I came to New York—

Q. Did he tell you that, sir? A. Yes, I knew about that, sir.

Q. Did he tell you he had said that to Mooney? A. You can't put it that this way.

Q. Well, he either did or did not tell you that. Which is it? A. I heard about it first from John Thomas Smith.

Q. I want to know if your father told you he had that conversation with Mooney.

Mr. Gallagher: Will you make the time a little more definite, Mr. Burling?

Mr. Burling: When he returned to Wiesbaden.

The Witness: I think this matter was discussed.

By Mr. Burling:

992 Q. Thank you. So he did tell you he had this conversation with Mooney? A. And other people with General Motors.

Q. Fine—including Mooney? A. Including Mr. Mooney, yes.

Q. Thank you. On October 22, 1931, did you have a conversation with John Thomas Smith? A. I had several conversations in those days. I don't remember each single one.

Q. You had known Mr. Smith since 1928, had you not? A. Yes.

Q. You were well acquainted with him? A. Yes. And I had several conversations with him on those days. To which one do you refer, Mr. Burling?

Q. To the conversation of October 22nd. You know you had a conversation with him around that time; is that correct? A. As I told you, several conversations.

Q. Thank you. And in the course of one of these, did Mr. Smith tell you that your father had communicated with him and said he would be willing to hold his Opel shares for a little more than five additional years, if General Motors would insert a gold clause in the escrow agreement? A. Yes.

Q. When Smith told you this, on or about October
993 22nd, did you tell him that that was impossible, because your father had already given away all his Opel shares? A. No, I didn't tell him so. And I had my reasons, as I explained to you yesterday. I had asked that my father would keep his secret.

Q. So you were dealing with Smith— A. Under the power of attorney, yes.

Q. And you knew that your father had told Smith that he, Wilhelm, would be willing to hold his, Wilhelm's shares, even though Wilhelm didn't have any shares to hold? A. I acted under the power of attorney at the time, and the escrow agreement still stood between my father and General Motors.

Q. Well, will you explain how your father could offer to hold his shares on October 22nd, if he gave away the last share he had on October 5? A. He wanted to assist me in getting a gold clause.

Q. So he, Wilhelm, offered to hold onto shares which he had already given away. Is that your testimony? A. No, Mr. Burling, that is not my testimony. You must read this wire, and you will see from this wire that he left it to me to make the decision.

Q. But the negotiations between your father on the one hand, and Mooney and Smith for General Motors for the other, looked to your father's retention of Opel
994 shares? Isn't that so? A. General Motors was immensely interested in keeping at least 5 per cent away from a sale, yes.

Q. And, again, for perhaps the one hundredth time, I implore you to answer my questions.

Isn't it true there was a negotiation carried on, while you were in New York, between General Motors on the one hand and your father on the other, whereby your father was offering to hold, to keep in his hands, the Opel shares, even though you testify now he had given them away on the 5th? A. The decision was left to me.

Q. Will you please answer my question? Isn't that the situation? A. No, that is not the situation, Mr. Burling.

Q. Well, you have just testified, haven't you, that you knew your father had communicated with John Thomas Smith, offering to hold his, your father's shares? A.

That was only a way of speaking. I was acting on the power of attorney.

Q. I am not asking you how you were acting. Your father offered to hold his shares, didn't he? A. No; you imply something that isn't in it.

Q. Wait a minute. Didn't you testify a moment ago that Smith told you your father had offered to hold his shares for five additional years, in return for a gold
995 clause? A. The shares mentioned in the escrow agreement.

Q. Did you or did you not? A. You are implying something that is not in it.

Q. Didn't you testify just a minute or two ago—and please answer my question—

Didn't you testify that Smith told you that your father had offered to hold his, Wilhelm von Opel's shares, for five additional years? A. You must take the entire—

Q. Did you or not so testify, sir? A. I did not testify that these shares were my father's shares.

Q. I didn't ask you that. Didn't you testify your father offered to hold his shares? A. No. He left it to me.

Q. Oh, Mr. von Opel. Really you can answer my question. A. I can't answer this question. You are implying something which isn't in it.

Q. Whether or not I am implying something, or what inference should be drawn from this transaction, is a matter for His Honor, after argument by counsel. I just want to know now what the facts are.

The Court: I understood him to say, Mr. Burling—and it can be correctly by any of you if you want to—I
996 understood him to say that Mr. Smith told him around about that time that his father had said he would hold it a certain period of time if he could get the gold clause written into it. I understood him to say that.

Mr. Burling: Thank you, Your Honor. That is my understanding also, and I will go on without laboring it.

The Court: If it is something different, Mr Gallagher can bring it out.

Mr. Burling: Yes; thank you, Your Honor.

By Mr. Burling:

Q. Now, after Mr. Smith told you this, you sent your father a wire dealing with this subject, did you not? A. That is possible.

Q. Do you remember what you said in that wire? A. No, I don't.

. . . . . .

1009 Q. Now, did you have a conversation with Mr. Smith about an offer which your father made to hold his shares, in return for a gold clause? A. Yes, sir.

Q. Will you state, as best you can remember, what you said to Smith and what Smith said to you? A. He told me about this exchange of wires, and, if I remember correctly, about this telephone call.

And I told him that my termination of the contract made on October 17 would stand.

Q. You did? A. Yes.

Q. You did not tell him you would have to go back to Wiesbaden and talk to your father about it? A. No, definitely not.

Q. You are sure of that? A. It just meant send-
1010 ing a wire to my father telling him I would come to discuss it with him; that I had told Mr. Smith there was no way of getting this termination reversed.

Q. You are sure of that? You are sure you did not tell Smith that you would have to go back to Wiesbaden and discuss the problem with your father? A. Mr. Smith suggested that—

Q. But are you sure you told him you would not do that? A. I am sure I told him the termination would stand.

Q. By the way, you know Mr. Smith is dead, do you not? A. I heard so about six weeks ago, yes.

Q. Now, you knew, did you not, that Mr. Smith on October 30 wired your father—and I am reading from Defendant's Exhibit 7.

You saw this wire? A. I have seen it later, yes.

Q. Didn't you see it when Mr. Smith sent it? A. No.

Mr. Burling: If your Honor please, this is already in evidence. It is a cable—

"Wilhelm von Opel, Wiesbaden, Germany.

"Your proposition in regard to one-half acceptable to us. Stop.

"Your son Fritz thinks he would like to confer with you about it further. Stop.

1011 "Sailing Europa, in Wiesbaden November 9."

By Mr. Burling:

Q. Did you tell Smith you would like to confer further with your father about his proposition? A. I told Mr. Smith I would explain to my father why I had cancelled, and why I would stick to it.

Q. Well, now, will you answer— A. And I further told him it was a ridiculous and silly proposition.

Q. But you did not tell him you wanted to confer further with your father about it? A. No, definitely not.

But I also say that Mr. Smith still hoped the deal could be made. They were all very much interested in keeping my father in the corporation.

Mr. Burling: I would like at this time, if your Honor please, to read Defendant's Exhibit 6, which is already in evidence. It is an incoming radiogram from Wiesbaden, addressed—

"Mr. Sloan, General Motors, New York City.

"Would like confirm position covered with Mr. Mooney. Stop. Personally would gladly continue connection and

seriously believe more in your interest regarding business here that I hold Opel stock than G. M. stock. Stop. Propose following basis: Quote: 'I keep fifty percent
1012 of my Opel stock until at least January first 1936. Stop. Having right to ask you then to purchase my stock at rate of Reichsmark' "—

The Witness: Twenty-six thousand five hundred.

Mr. Burling: Thank you. The word seems to be in German—

"'per share as provided in present agreement regarding stock. Stop. However you guaranteeing currency to the effect that the amount payable to me on January first 1936 is not less than goldmark 26,500 per share on local basis of one goldmark being equal to one two thousand nine hundred seventieth of one kilogram fine gold. Stop. For explanation quote should I sell to you today I would receive about same amount now as I ask you to guarantee per January first 1936.' Unquote. Should you at any time before January first 1936 decide to reduce stock capital of Opel such reduction should not affect total amount payable to me in case you purchase mo, m-o stock"—

I guess that is "my"—

"Stop My son Fritz is authorized conclude on this basis. Kindest regards.

"Wilhelm von Opel."

And the date of that is October 23, 1931.

By Mr. Burling:

1013 Q. Did Mr. Smith show you this cable I have just read? A. It is possible he mentioned it.

Q. Did he show it to you? A. I can't recollect. It is possible.

Q. And did you in fact sail on the Europa, did you not, back to Germany? A. Shortly thereafter, yes, sir; I think around October 30.

Q. And Mr. Smith went with you to talk to your father,

didn't he? A. I don't know whether he went on the same boat. It is possible.

Mr. Burling: I offer in evidence a certified copy of portions of the manifest of the Steamship Europe, which sailed from the Port of New York, October 31, 1931, in so far as it relates to Fritz von Opel and John Thomas Smith, the original of which is contained in the records of the Immigration and Naturalization Service.

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit 57.)

By Mr. Burling:

Q. Will you examine the second sheet of this exhibit, which is the passenger manifest of the Europa? A. Yes.

1014 Q. And see if you see your name. A. Ye.

Q. Now, do you see a column, in Column 6, which says "Country where you are going to live". Do you see that column? A. Yes.

Q. And what does it say for Fritz von Opel? A. It says "Germany ditto". It says where you were going to go.

Q. Where you were going to live, wasn't it? A. No. I did not make out this manifest, Mr. Burling.

Q. Did you ever tell that to any official? A. No.

Q. I show you the first sheet and ask you if you see there the name John Thomas Smith. A. Yes.

Q. And your remember Mr. Smith was on the board, don't you? A. It is possible. I don't recollect it. But he went back about the same time.

Q. And did you not have conversations about your father's gold proposal while on the boat? A. That is possible, certainly. There were very much interested to keep my father in it.

Q. And you and Mr. Smith traveled together to
1015 Wiesbaden, didn't you? A. I don't know whether he went by the same boat I went. Anyway, we further on were at the same time in Ruesselsheim at the factory.

Q. And didn't you and your father and Mr. Smith have a discussion about whether he should keep either 300 or 600 shares of Opel stock in return for a gold clause? A. I told Mr. Smith that that deal was out; that I would not reverse the contract.

Q. Isn't it a fact that Mr. Smith was not told by anybody that that deal was out, until after you and Smith reached Wiesbaden? A. I had already terminated it, October 17. There was no reason to tell him anything further.

Mr. Burling: I offer in evidence, as admitted by the plaintiff, Defendant's Exhibit 58.

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit 58.)

Mr. Burling: This is a cable, signed "Smith", dated November 10, 1931, and it is addressed to General Motors in New York:

"Bradley Geheimrat under Fritz's advice has withdrawn proposition to retain one-half. Stop. Settlement should be carried out pursuant to letters of instruction."

1016 By Mr. Burling:

Q. Now, isn't it true that after you and Smith reached Wiesbaden, you had a discussion with your father and told him that he should tell Smith that he would not go through with his proposal to hold onto the shares in return for a gold clause? A. I told my father I had terminated. I told him why I had terminated, that it was absolutely silly to go on at this low rate of interest, 2 8 per cent; and that I had no reason personally to do Gen-

eral Motors a favor, so that they could save taxes in Germany.

Q. And so your answer to my question is no, you did not tell your father or persuade your father to tell Smith that he withdraw the— A. There was no reason for me to—

Q. Fine. But will you answer my question, Mr. von Opel?—Isn't it true that your father, in your presence, told Smith that you had persuaded him to withdraw his offer? A. I don't get your question. —

Q. Your father did not speak to Smith in your presence? Is that right? A. I don't remember that. I think, if I remember correctly, I told my father the termination was made, and he should tell the General Motors people that he reversed his former stand.

1017 Q. I see.

Now, your present testimony is, is it not, that when you arrived in New York you first asked that a gold clause be inserted. Then, on the 17th you found you could not get the gold clause inserted, so you sold the stock; you put the stock to General Motors.

And then later, around the 22nd, Smith told you your father had talked to Mooney and had cabled to him offering to hold a part of the shares, in return for a gold clause. Is that right? A. That is the way I understood it, yes.

Q. That is the sequence of events? A. I think the first event is, it may have been between October 15 and 17, that I asked General Motors to put in a gold clause.

Q. That is right. A. A gold clause for the full value.

Q. That is right. Well, didn't I state the sequence correctly Mr. von Opel?—

First, between the 13th and the 17th, you negotiated for a gold clause? A. Yes, sir; that is the way I remember it.

Q. On the 17th you put the stock to General Motors, and on the 22nd you had a discussion with Mr. Smith.

1018 A. I don't remember the dates of these discussions,

because I was in General Motors pretty nearly every day, day.

Q. But, at any rate, the discussion about your father's offer to hold the shares came after you put the shares to General Motors, wasn't it? A. That is the way I understand it. It is possible my father was in contact with them sooner than that.

Q. But you have no knowledge that that is not the way it happened? A. I don't; I don't recollect.

Q. Now, I want to read from folio 141 of your gold case affidavit:

"Within the next few days I left for New York. Upon arriving in New York in October, 1931, I entered into negotiations with John Thomas Smith, vice president and general counsel of General Motors Corporation, in New York, for a modification of the escrow agreement, Exhibit Q, so as to place the Reichsmarks payable thereunder on a gold or gold equivalent basis. I received no definite answer on this proposal, but after several days I was told by Mr. Smith that my father had agreed by cable with Mr. Sloan, president of General Motors Corporation, to modify the escrow agreement so that the price of 300 shares of Opel Motor Works stock, that is one-half the total number, should be payable in Reichsmarks on a gold or gold
1019 equivalent basis. On receiving this news from Mr. Smith, I considered the matter for a while and then told Mr. Smith that I did not agree and would call for payment under the escrow agreement in the exercise of my rights as attorney-in-fact. I then cabled my father stating in substance what I had done, giving my reasons, and adding that I should discuss the matter with him on my return to Germany.

"On or about October 17, 1931, I gave written notice to General Motors Corporation of my election to deliver to it the shares described in the escrow agreement, Exhibit Q, at the price therein stated," and so on.

Now, in your gold case affidavit you indicate that the discussions with Smith about your father's proposal came before you put the stock to General Motors, and not after. A. No, sir. Will you please read that again?

Q. Well, your counsel can read it. I have read it once. A. That is not covered.

Mr. Gallagher: Your Honor, I think the witness is entitled to have a copy of this before him, instead of trying to follow all the reading.

The Witness: Well, I follow it.

1020 The Court: He has asked him a question, and he has answered it.

The Witness: May I answer your question, Mr. Burling?

By Mr. Burling:

Q. Please do. A. On the gold case affidavit, it stated I negotiated on the gold clause, and a few days later my father made another proposal, which is absolutely correct. You stated my father made this proposal around October 22. And I negotiated with them on the gold clause between 15 and October 17, when I cancelled. So there are several days in between—five days.

Q. In any event, you are clear you never told John Thomas Smith about the gift, aren't you? A. I am rather sure, yes, sir. But as I told you yesterday, for a time I was under the impression that it was John Thomas Smith and not the National City Bank with whom I had talked about the technicality of substituting me in the escrow agreement.

Q. You did say in the New York interrogation in 1946, did you not, as follows:

"And I asked General Motors whether they would prefer to work under the gift agreement or under the power of attorney, and they answered that the gift agreement would require a long time to check into and to properly

1021 establish my rights under it. So it would be much

simpler if I would act under the power of attorney, which I did."

A. That is correct. At this time I had not seen the wire yet which I sent from the steamer to the National City Bank. I thought at the time I had sent this wire to General Motors.

Q. All right. Now, in 1931, you purchased all of the shares of Uebersee Finanz-Korporation from Adler and Company, did you not? A. Yes.

Q. And the entire purchase price was derived from the proceeds of the Opel shares? Is that right? A. Yes.

Q. Do you know a man named Theodore Hoffacker? A. Yes.

Q. You knew him in 1931, didn't you? A. Yes, I think I met him for the first time in 1922.

Q. And he was an investment counsellor, was he not? A. In New York, yes.

Q. And he had a company called Theodore Hoffacker Company, is that right? A. Yes.

Q. And did you arrange that the proceeds of the Opel shares were to be invested and managed by Hoffacker
1022 & Company? A. Yes, I had a contract with him of this kind. I don't remember the details. I think he operated this account.

Q. And he bought and sold securities for Uebersee? A. Yes.

Q. In 1932 and 1933? Right? A. Yes, it is possible.

Q. And in the spring of 1932 you authorized Hoffacker to acquire the majority interest in an American corporation called Spur Distributing Corporation, didn't you? A. In the spring of 1932?

Q. Yes; wasn't that when it took place? A. Yes, it is possible.

Q. I am not asking you whether it is possible, I am asking you if that is not when it happened. A. I think prior to this time I had already acquired about five or ten thousand shares. And later on I acquired the majority. That is correct.

Q. But you completed the acquisition of the majority in the spring of 1932? A. I completed—that is the right word, yes.

Q. And you knew at that time Spur operated a string of gasoline filling stations? A. Yes.

Q. And didn't you then cause Uebersee to give Hoffacker proxies so he could vote the Spur stock? A. Yes

1023 Q. And do you not know that Hoffacker then voted himself in as vice president of Spur, and put a person named von Klemm, and another person in the office, on the board of directors? A. He was from Hallgarten & Company from which I acquired the majority. I am speaking about Mr. von Klemm. I bought the first stock of Spur from Mr. von Klemm.

Q. I see. And you have attended neither a stockholders or directors meeting of Spur? A. It is very difficult for me to tell you that offhand. I would have to check my records.

Q. You have no present recollection of having attended such a meeting? A. I think directors meeting, I attended several of them, because I was always on the board of directors of Spur.

Q. You were always on it? A. I think so. At least, I think I went on the board in 1934 or 1935, and remained on the board, I think, until about 1941.

Q. And you didn't meet the president of Spur until the summer of 1934, did you? A. That is possible. I met him some time after the majority was acquired.

Q. And you first met him in Paris? Is that right?

1024 A. What do you say?

Q. You first met him in Paris? Is that right? A. Mr. Houghland?

Q. Yes. I do not recollect it; and I rather doubt it.

Q. There isn't any doubt that the president of Spur from the time you acquired it, from the time it was vested, was Mr. Mason Houghland? A. Always the same president, yes.

Q. And that was Mason Houghland? A. Yes.

Q. Thank you. A. But that doesn't mean I met him in Paris.

Q. Where do you think you first met him? A. I think I first met him here in America.

Q. Well, where? A. It is possible that he came to New York. It is also possible I met him first in Nashville, Tennessee, where the headquarters of the corporation are.

Q. Of course, it is possible; but which do you think it was? A. After seventeen years, I really couldn't tell you that.

Q. At any rate, at one time you did meet Mr. and Mrs. Houghland in Paris? Isn't that so? A. I do not
1025 recollect it. Of course, it is possible. If you give me the year—

Q. It is 1934 I am talking about. A. And I can refresh my recollection. Of course, it is possible.

Q. 1934, it is possible. Well, perhaps I can refresh your recollection a little more. Didn't you call for Mr. and Mrs. Houghland and take them to a very good restaurant in Paris, and then take them to the Follies Bergiere? A. It is absolutely possible.

Q. And at any rate you do not recall having any business discussion— A. I do not recollect it.

Q. You do not recall having any business conversation with Houghland in Paris, do you? A. In which respect? Would you refresh my recollection?

Q. I say, you did not have—I can't refresh your recollection as to what you did not do.

Isn't it true you did not have any business discussions with Houghland in Paris? A. It was fifteen years ago, and I just told you I didn't even remember I met him in Paris. How could I make such a statement?

Q. The answer, apparently, is no. Is that right?
1026 A. I could not say I had no business discussion with him.

Q. The question is, you don't now recollect any? A. I don't recollect any business discussion right now.

Q. Thank you. You have spent a great deal of time, haven't you, in the past five years, trying to recall all of the aspects of your relations to Mr. Houghland? A. During the past five years?

Q. That is right. Haven't you thought a great deal about your relations with Mr. Houghland? A. You had better turn it the other way, Mr. Burling.

Q. Well, if there is some other question to be asked, your counsel could ask it. I ask you this question. A. I found out that he was disloyal to me.

Q. I am not asking you that. I am asking you a yes or no question—

Haven't you spent a great deal of time thinking about your relationship with Mr. Houghland? A. No, Mr. Burling.

Q. You have not? A. I have better things to do than thinking all day and night about Mr. Houghland.

Q. You haven't talked to your lawyer at great length about Mr. Houghland? A. Within the last two or
1027 three weeks, yes.

Q. Haven't you tried to go back over all the transactions you and Mr. Houghland had together? A. Certainly. We even made a motion in court in this respect.

Q. Fine. Isn't it true that the first time you saw Houghland in Nashville was in 1935? A. That is possible. I was in Nashville several times. I should say offhand about three or four times.

Q. But, at any rate, from 1932 until 1935, it is true, is it not, that you let Hoffacker manage your investments in Spur? A. I wouldn't say that. I supervised the activities of Mr. Hoffacker.

Q. But Hoffacker supervised Spur? Is that right? A. I don't know the exact year when I went to the board, you see. But, for instance, I remember that in 1933, or even 1932, it was shortly after I had acquired the majority of Spur, I gave Mr. Houghland a seven years contract.

Q. But you hadn't met Mr. Houghland at that time, had you? A. I would rather say that I must have met him somewhere, because it is very unlikely that I would have given him a contract without meeting the man first.

Q. Whether or not it is unlikely, the fact is you
1028 had never met him before you gave him the contract, did you? A. I never made such a statement. I said I did not recollect it.

Q. Do you recall meeting Mr. Houghland prior to or at the time you gave him the contract? A. I do not remember that, but it is very likely that I saw him.

Q. That is an argument which your counsel can make to His Honor. A. Pardon me.

Q. But you have no recollection— A. I have no recollection, no.

Q. Thank you. Now, will you state whether or not Hoffacker didn't say to you in 1932 that since Spur is a gasoline retailing enterprise, it would be profitable to invest some of your money in properties producing gasoline, that is to say, oil wells and refineries? A. Yes, we had discussions along this line, and I actually did do it.

Q. And Hoffacker commissioned the Crittenden Engineering Company to prepare a report on available oil properties, didn't he? A. I remember that, yes.

Q. And he then invested about four hundred and fifty thousand dollars of Uebersee money in oil properties,
1029 did he not? A. Yes, I think so.

And the way this was done was to incorporate Oil Production, Incorporated? Isn't that true? A. I think that was the name, yes.

Q. And Hoffacker became president, and a man named Crittenden became the vice president of that company? Isn't that so? A. Yes, to the best of my recollection.

Q. And then Oil Production, Inc. made a management contract with Crittenden whereby Crittenden was to manage the property? Is that right? A. That is not quite correct. I think the management contract was made with Mr. Grogan and Crittenden.

Q. G-r-o-g-a-n? A. G-r-o-g-a-n, yes, sir.

Q. Crittenden and Hoffacker also incorporated a thing called Oil Refineries, Incorporated? A. Yes, I think so.

Q. And invested $95,000 of Uebersee money in purchasing a small refinery? Isn't that correct? A. In East Texas.

Q. When did you first meet Mr. Crittenden? A. That must have been around this time.

Q. You didn't supervise the activities of Crittenden, did you? A. No; he was a chemical agent here and he was running the refineries.

1030

Q. But Hoffacker was watching your investment in this property, was he not? A. Yes.

Q. And Hoffacker also put Uebersee money in a brewery in Lowell, Massachusetts, called the Harvard Brewing Company? Is that correct? A. I think the deal was originally made through Hallgarten & Company, in New York.

Q. But Hoffacker became the president of Harvard Brewing Company? A. After I acquired the majority. He wasn't the first president. There was first another president. In the beginning, if I remember correctly, I had only 30 or 40 per cent, and the rest was held by clients of Hallgarten; and in the years to come I then acquired majority.

Q. Well, in those early years, Hoffacker supervised your investment in the brewery? Is that right? A. Not he alone. I also had other people in it. For instance, my accountants were represented, partly as officers and partly as directors.

Q. I see. How many times did you see Crittenden at the time you started to invest money in oil properties? A. Before I invested it?

1031

Q. At the time. A. At the time—I saw Crittenden, I should say offhand, not more than four times in my life.

Q. Will you identify the four times you saw Crittenden in your life? A. I think I saw him in Overton, East Texas;

and I can even give you the time, because this terrible explosion had happened where 500 children had gotten killed.

Q. That is the New London school disaster you refer to? A. Yes. About this time I came, for the first time, I think it was—but I am not quite sure on that; it is so many years ago—but I think that is the first time I came into East Texas.

Q. And that is the first time you met Crittenden? A. I am not sure. The headquarters of the corporation were in Shreveport.

Q. In Shreveport, Louisiana? A. In Shreveport, Louisiana, and it is possible I had been in Shreveport.

Q. You saw Crittenden at the time of this disaster. What are the other three times you saw him? A. I saw him several times.

Q. Well, tell us about each occasion on which you
1032 saw him, will you please? A. I can't do that, Mr. Burling.

Q. Well, do the best you can, will you please? A. I was in Shreveport several times, and in the East Texas field, if I remember correctly, only once; and I think I met him in New York.

Q. Did you ever meet him in any foreign countries? A. Oh, I traveled with him over to Germany when we wanted to acquire this Burgess process.

Q. The what process? A. The coal-into-gasoline process.

Pardon me; no, it wasn't the Burgess process. It was too expensive. It was the process called—I forget the name of this process. It was a competing process to Burgess, and Crittenden thought we could use it to make gasoline out of natural gas.

Q. Did you on any other occasion see Crittenden in any foreign country? A. I don't recollect that.

Q. You spent two weeks with him in Zurich, didn't you? A. With Crittenden?

Q. Yes. A. I do not recollect that. At what time?

Q. Did you ever spend two weeks in Zurich with Crittenden, in the same hotel?—and I will identify the
1033 hotel as the Baur au Lac? A. I think the Crittenden family traveled through Switzerland, and it is possible I met them in their traveling.

Q. You spent two weeks in a series of business discussions with Crittenden in Zurich, did you not, at the offices of Hans Frankenberg? A. No.

Q. You deny that? A. I can't remember that, because there was nothing besides technical matters I had to discuss with Mr. Crittenden.

Q. And you also saw him in Montreal, didn't you? A. Yes, I remember that. He came up to Montreal. I think that must have been in 1935 or 1936.

Q. Wasn't it June, 1936? A. Yes, that is possible, yes.

Q. You and Frankenberg were in Montreal together at that time, weren't you? A. No, I don't remember that. I think Mr. Kressel, my lawyer, was there.

Q. Wasn't Frankenberg there? A. It is possible, but I think Mr. Kressel was there.

Q. Who did you see while you were in Montreal? A. At this time I wanted to immigrate to the United States.

Q. I didn't ask you what you wanted to do, Mr.
1034 von Opel; I asked you who you saw at Montreal.

A. I just tried to refresh my own recollection.

Q. Please think, and then tell us who you saw in Montreal. A. I think Mr. Kressel was there. I think he had even taken his wife along, if I remember correctly. And some of my accountants were there.

Q. How about Mr. Guyette? Was he there? A. That is possible, yes.

Q. And how about Mr. Houghland? A. Mr. Houghland, I don't recollect. It is possible.

Q. Will you state why you were in Montreal at this time? A. Because at this time by lawyer, Kressel, advised me not to enter into the United States, on account of this nuisance suit.

Q. That is, you didn't wish to be served with a summons and complaint, in a lawsuit? Is that right? A. Yes, this nuisance suit of Cole.

Q. Isn't it the fact that you had Guyette, who was also at that time the head of Harvard Brewery— A. Yes.

Q. —come up for a day? A. That is possible. All my business associates I think were there for a few days.

1035 Q. Now, did you at any time after October 5, 1931, did you or any member of your family own a house at Kampen, on the Island of Sylt? A. No, sir.

Q. Did you or any member of your family rent a house during the period I have specified, at Kampen? A. My wife had rented a cottage there, a small two-room cottage.

Q. What was the name of the cottage? A. I don't remember that. She was very sick at the time, and her physician had told her to go to the seaside to a cool place.

Q. When did this take place? A. I don't remember the year exactly.

Q. What is your best judgment as to the year in which your wife was so ill? A. I can't recollect the date.

Q. Now, will you state whether or not it is correct that in August, 1937, you learned that Mr. Houghland and his family were in Europe on a pleasure trip? A. Mr. Houghland went to Europe quite frequently for horseback riding, yes, sir.

Q. I didn't ask you why Mr. Houghland went to Europe. I asked you if you learned he was in Europe in August, 1937. A. That is possible.

1036 Q. Is it not the fact that you wired him in August, indicating a desire to meet him in Europe? A. It is possible. He came there frequently.

Q. I show you Defendant's Exhibit 59 and ask you if that is a cable you sent Houghland? A. That is possible.

Q. It bears the signature "Fritz von Opel, Kampen, Sylt", does it not? A. Yes.

Q. Doesn't that refresh your recollection as to whether you did or did not send this? A. Yes; I think I sent it, yes.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit 59.)

By Mr. Burling:

Q. And then you sent him another wire asking him to meet you Hamburg? Isn't that right? A. Where, please? I didn't get it.

Q. Hamburg. A. Yes.

Mr. Burling: I ask that this piece of paper be marked.

(The document referred to was marked for identification as Defendant's Exhibit No. 60.)

1037 Mr. Burling: If Your Honor please, this is on a telegraph form, which has some gaelic, which I am unable to read. I therefore intend to offer the document only in so far as there is English written on it.

The Witness: What is it?

By Mr. Burling:

Q. I ask you, Mr. von Opel, is that a copy of a cable which you sent Houghland? Perhaps I can read it to you, if you have difficulty in reading it. A. Yes (returning the paper).

Q. The address indicates redirected at Wicklow, and then an illegible number; then "Houghland", and then the name of a hotel, an Irish name which I am unable to pronounce. The message is:

"Would your plans permit seeing me in or new Hamburg any date after August 25."

Then I take it the next is in French, the words "Beaucoup, B-e-a-u-c-o-u-p, de d-e, planir, p-l-a-n-i-r"— and then "regards, Opel, Zurich, Dolder Hotel."

Does that refresh your recollection as to whether you sent this message? A. Yes; I think I sent it.

Mr. Gallagher: What is the date, please?

Mr. Burling: The date is August 4.

Mr. Gallagher: What year?

1038 Mr. Burling: 1937.

I offer that in evidence, Your Honor.

Mr. Gallagher: No objection.

(The document referred to, previously marked for identification Defendant's Exhibit 60 was received in evidence.)

By Mr. Burling:

Q. And then you subsequently sent him a letter, did you not, dated August 23, 1937? A. Around the same time?

Q. August 23, 1937.

I show you Defendant's Exhibit 61 and ask you if it is a letter signed by you. A. It is my signature, yes. May I read it?

Q. Certainly (handing the letter). Will you examine the letter and state whether it is not a letter which you wrote to Houghland?

Can't you tell whether that is a letter you wrote to Houghland? A. Yes; I would like to read it to refresh my recollection.

Q. Are you unable to tell whether you wrote that to Houghland? A. No; but you might ask me questions, and I would like to read it.

1039 Q. If you will let me have it, I will read you any portions I want to ask you about.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit 61.)

By Mr. Burling:

Q. I want to read you the first paragraph:

"Many thanks for your cable informing me about the trip you intend to take to Tyrol. I hope very much you enjoyed the journey you had and that your route took you from Frankfurt or Mainz either through the Black Forest (Baden-Baden and Freudenstadt) or via Rothenburg and Nuernberg, where the Party-Congress is just being prepared."

Did you write that? A. Yes. I gave him on two pages suggestions how he should travel, and he was very much interested to see all what he could see in Switzerland, Italy, Germany, and so on.

Q. Including the Party-Congress in Nuernberg? A. Yes; many Americans went there because they wanted to see it.

Q. Now I want to read you the last paragraph on page 2:

1040 "A fortnight ago I had a conference with Crittenden and Bayer in Zuerich."

Does that refresh your recollection as to whether you had a conference with Crittenden in Zurich? A. Yes; I recall Crittenden and Bayer, my accountant, were on a visit in Zurich.

Q. Do you now remember you had a conference in Zurich? A. Yes.

Q. Finally you send Houghland a wire asking that he meet you in Hamburg, Germany, on the 14th of September, 1937? Isn't that correct? A. I don't recollect it. If you show me the cable, I think I can identify it.

Q. All right; I show you Defendant's Exhibit 62. Did you send that wire? A. Yes.

Mr. Burling: I offer it in evidence.

(The document referred to was marked and received in evidence as Defendant's Exhibit 62.)

By Mr. Burling:

Q. What business did you expect or at the time discuss with Houghland in Hamburg? A. Business in general.

Q. Well, what business? A. The Spur Distributing business.

1041 Q. Did you expect to discuss any other business with Houghland in Hamburg? A. I had no other business with Mr. Houghland.

Q. You did not intend to discuss any other business with Mr. Houghland; but the selling of gasoline by Spur Distributing? Is that right? A. Yes; it was the same topic of our conversation.

Q. Did you intend to discuss any other business with him? A. How can I recollect that after ten or twelve years, Mr. Burling, what I in this time intended to discuss with him?

Q. Why did you select Hamburg as a meeting place? A. Because that was the place, I think, where he wanted to board the ship. He either spent most of his time in Ireland; so I thought it would be convenient for him to either to come in to Hamburg or go out from Hamburg.

Q. Is it not the fact that you wanted Houghland to come to Hamburg because you wanted to discuss the question of investing in a German synthetic rubber proposition? A. With Mr. Houghland?

Q. Yes. A. That is fantastic.

Q. Well, whether or not it is fantastic, is it cor-
1042 rect or incorrect? A. It is incorrect.

Q. Did you tell Houghland you were interested in producing synthetic rubber tires, and you wanted to know what he thought of the possibility of selling them through the Spur stations? A. He at the time—

Q. Did you or did you not say that? A. You are mixing up two things. We discussed the tire business in Spur. But I certainly didn't propose anything so fantastic as the business of exporting German tires to America. That could not be done.

Q. Did you speak of acquiring a German process for manufacturing synthetic rubber? A. No.

Q. Did you ask Houghland to inspect anything? A. Houghland is not a mechanical engineer or a chemist.

Q. Whether or not he is, did you ask him to inspect anything? A. You mean anything in a technical line?

Q. Yes, in Hamburg, Germany. A. In Hamburg, Germany, I cannot remember that.

Q. Didn't you ask him to go with you to inspect a truck which had been equipped with synthetic rubber tires and had been run many thousands of miles, to show him how satisfactorily the tires had held up? A. It is pos-
1043 sible that I showed him a truck. I mean, every American is interested in those things.

Q. You have no recollection, however, of having asked him to go with you to a place in Hamburg and inspect the tires on a truck? A. I don't even recollect that I met him in Hamburg. If you will give me the name of the place, or where I went with him, I then would be in a position to answer that question intelligently.

Q. But you have no recollection at the present time? A. No. Of course, it is possible that I discussed synthetic tires with him. They were just coming out; they were new on the market; and it is possible he asked me about it.

Q. Now, you now recall having seen Crittenden in Zurich in 1935; don't you? A. Yes, but not, as you say, for fourteen days. He might have been there fourteen days. I certainly saw him only occasionally, because we had very little to discuss.

Q. You had been dealing with Crittenden in Germany earlier that same year, hadn't you? A. He went there—

Q. Where? A. I think it was Mr. Hoffacker, if I am not mistaken, Mr. Crittenden, and another American
1044 who was head of or one of the biggest builders of refinery equipment.

Q. What was his name? A. I forget the name. It was quite a big concern.

Q. Was it Koch?—K-o-c-h? A. That is possible; yes. It sounds familiar to me.

Q. When did you first see Crittenden in Germany in the year 1937? A. If I remember, they went to Berlin.

Q. Where and when did you first see Clittenden? A. I do not recollect that.

Q. Wasn't it in Berlin in the spring? A. That is possible.

Q. And Crittenden had gone to Berlin at your request; had he not? A. No; it was vice versa. He thought it was a big chance getting some "dope", as you say technically, on some German process which we could then in turn employ for our refineries in Texas and Louisiana.

Q. I see. And the process was being experimented with or on by a German company called Ruhr Chemie? Is that right? A. That is correct. They had this big experimental plant, yes.

Q. And you had been requested to get in touch with the officials of Ruhr Chemie, so that Crittenden and
1045 Koch could inspect the process? Is that right? A. Yes. There were two processes, Burgess and this Ruhr Chemie process, and Crittenden thought the Ruhr Chemie process was a more practical one for America.

Q. The name of the process was the Fischer Tropp process? A. Yes, the Fischer Tropsch, isn't it?

Q. I see. And isn't not the fact that Hoffacker, Crittenden, and Koch met you in Berlin? A. That is possible. I think they went first to Beriln, and from Berlin we went to the Ruhr to inspect this plant.

Q. They met you, and all four of you stayed at the Bristol while in Berlin, for about a week? Isn't that so? A. That might have been.

Q. And during this time you were seeking to arrange meetings between the Ruhr Chemie officials and Crittenden, Hoffacker and Koch? Is that right? A. That is possible.

Q. And is it not the fact that you four men then went

to Essen? A. I think it was near Essen where this plant was.

Q. But you stayed in a hotel at Essen, did you not? A. Well, we had to stay somewhere. We stayed there a day or two; I think so.

1046 Q. Wasn't it closer to a week you stayed in Essen?

A. I don't recollect. We inspected the plant, and I think I can say what Mr. Crittenden's impression was. He thought it was just peanuts.

Q. Fine. But I didn't ask you that, Mr. von Opel. Just answer my questions. A. Your question was how many days we spent?

Q. Yes. A. If I recollect that correctly, only a very few days. I think we only went to the plant, I think, once or twice.

Q. You made several trips between Essen and the plant, which was at Oberhausen, did you not? A. That is very close to Essen, yes.

Q. I didn't ask you how close it was to Essen. I asked you if you made several trips between Essen and the plant at Oberhausen? A. Yes, I think the plant was there.

Q. I didn't ask you whether you thought the plant was there, either. I asked you didn't you make several trips between Essen and Oberhausen? A. That is most likely.

Q. And you made them by automobile, did you not? A. That is the easiest way to go there, yes, sir.

Q. And I didn't ask you what was the easiest way to go there, either. Just answer me. A. Yes.

1047 Q. And isn't it true that the Ruhr Chemie people stated they were not in a position to give you or Crittenden final word as to whether they were to give you a license on the process? A. If I remember correctly, Mr. Crittenden immediately thought that the process was much too expensive. And, of course, they were eager to license an American firm.

But, if I remember correctly, their demands were so far out of any possibility, that nothing came out of it of any sort.

Q. Now, on the occasion of your last return from Oberhausen to Essen, is it not true that you and Hoffacker got into a fight in the automobile? A. What do you mean by "fight"?

Q. Into a quarrel. A. Of course, that is different. A fight is some boxing.

Q. I will come to the boxing.

Did you first get into a quarrel in the car? A. If you refresh my recollection, I had quite a number of quarrels with Mr. Hoffacker. That is the reason I dismissed him.

Q. Well, on this occasion didn't you have the chauffeur stop the car, and didn't you and Hoffacker get out,
1048 preparatory to this boxing? A. I don't remember this incident.

Q. Do you remember that after you returned to Essen, Hoffacker went off by himself, and you asked Crittenden to have dinner with you? A. That is possible.

Q. And on this occasion, did you not tell Crittenden
1049 that your father had caused reports to be prepared on Hoffacker, on Crittenden, and on another business associate of yours? A. I don't remember that.

Q. Do you think you did or did not tell this to Crittenden? A. Oh, I now remember, one of the General Motors people—I don't recall the name—had heard about my connection with Mr. Hoffager, and he had at the occasion of the visit in Germany given my father, made some remarks to my father about Mr. Hoffager.

Q. I see. Did you tell Crittenden this in a hotel in Essen in 1937? A. And I think I told Mr. Crittenden that I had gotten a financial statement on Mr. Hoffager, and his dealings, and that it looked not too rosy.

Q. You did not say that your father had done this A. No.

Q. Did you say that your father had prepared reports on Crittenden? A. No.

Q. You did not tell Crittenden? A. My father did not even know the name Crittenden.

Q. Did you tell Crittenden on this occasion that your father was very angry with you, because you had intrusted Uebersee's business affairs to Hoffager? A. No.

1050 Q. You had no such conversation? A. No.

Q. You did not tell Crittenden that your father was satisfied with the report that he had received—your father—on Crittenden? A. As I told you before, my father didn't even know the name Crittenden.

Q. The answer to that is no, then, is it? A. No, definitely—yes.

Q. Is it not a fact that you told Crittenden on that occasion that you were administering your father's funds? A. Definitely not.

Q. You are absolutely sure of that? A. Absolutely sure.

Q. I am glad to get a clear answer. Did you not tell Crittenden in Essen that in return for your administering your father's funds you were entitled to keep a part of the proceeds? A. No, definitely not.

Q. Did you have any conversation with Crittenden along this line? A. Definitely not. With Crittenden I had merely technical conversations.

Q. After you left Essen, where did you personally 1051 go? A. I don't recollect that.

Q. Did you not go to Berlin? A. If you would refresh my recollection.

Q. I am refreshing your recollection. Did you not go to Berlin? A. That is possible.

Q. At a time thereafter, did you and Frankenberg discuss a plan to merge Oil Production, Inc., and Oil Refineries, Inc. with an outside refinery named Rodessa? A. I had two refineries.

Q. Did you have such a discussion with Frankenberg? A. I don't remember any details.

Q. Can't you answer me yes or no, did you have such a conversation with Frankenberg? A. About merging my three refineries?

Q. Yes. A. You must give me the date, first, because—

Q. In the summer of 1937. A. I don't know when I acquired the Rodessa refinery, and therefore I cannot tell you—I had two small refineries in East Texas

Q. Did you ever have a conversation with Frankenberg on this subject? A. That is possible.

Q. Did you and Frankenberg not decide to call a
1052 conference in Zurich on this subject, and did you not decide to call Crittenden over to Zurich to discuss this? A. There was no need.

Q. Did you or did you not? A. I do not think so. He was a technical head here, he had nothing to do with financial matters.

Q. Will you please stop volunteering and try to answer my questions. Now, the auditors of the various corporations in America which Uebersee held at this time were Bayer and Clauson, is that right? A. They were my accountants, they are certified public accountants, and they were doing all my business.

Q. The answer to that question would have been yes? A. Yes.

Q. And you decided to send for Bayer, of the firm Bayer & Clauson, at this time, did you not?

Mr. Ingoldsby: Where is this, now, at what time?

Mr. Burling: Zurich, summer of 1937.

The Witness: I do not recall that I asked Mr. Bayer to come to Zurich for this purpose, because it would have been a tremendous expense, but it is possible that at the occasion of Mr. Bayer's trips to Europe that he stopped in Zurich and we discussed financial matters.

By Mr. Burling:

Q. You did not call a conference in Zurich to be attended by Frankenberg, Bayer, Crittenden, and you? A. You mean call Mr. Bayer from New York for the purpose of this conference?

Q. Yes, that is what I mean. A. I don't think so, because that is not the way I did business. It would have cost a lot of money.

Q. If you did not do it, do you know whether Frankenberg did it? A. I don't think so.

Q. In July, 1937, you stayed at the Hotel Baur-au-Lac, is that correct? A. Yes, that is possible.

Q. And Mr. and Mrs. Crittenden, and Mr. and Mrs. Bayer also stayed there? A. Yes, that is a place I recommended to them.

Q. And is it not a fact that the discussions of merger went on in Zurich for about two weeks? A. That sounds rather fantastic to me, Mr. Burling, because if I wanted to merge, all I would have to do is to give the orders.

Q. Is the answer not no? A. It is possible that before they went on their trip that we had a discussion, and after they came back, but certainly it sounds—

Q. Weren't the Crittendens and the Bayers in Zurich for a period of two weeks, during which off and on you had conferences in Frankenberg's office? A. Now you say off and on, that is different. I only object to the implication that for 14 days we were discussing this tiny matter. Off and on, certainly that is possible.

Q. Did you not have conferences extending over a period of two weeks? A. It is possible that within a period of two weeks we had several conferences.

Q. And these were held in Dr. Frankenberg's office, is that right? A. In the office of the Adler Bank.

Q. It was in Dr. Frankenberg's private office, was it not? A. No, it is a conference room of the Adler Bank.

Q. I will try to refresh your recollection. Do you remember that Dr. Frankenberg has a Degas collection of paintings in his private office? A. They are owned by the Adler Bank.

Q. Where are they? A. They are in the conference room of the Adler Bank.

Q. During these discussions was it not said that a million dollars additional capital should be put into the merged companies? A. That was what Mr. Crittenden
1055 wanted. He was quite a great spender in refining.

Q. Didn't you and Frankenberg say that you thought that you would do that? A. That is not very likely. Mr. Frankenberg was always against my investing in refineries. He always said it was too big and too risky a job, and he was right in the end.

Q. When the conferences were finally over, is it not a fact that you and Crittenden walked out of the building and walked down the street together? I will try to refresh your recollection. Did you not say on that occasion that you were very glad that Frankenberg had agreed to Crittenden's proposals? A. That seems very unlikely to me, because Dr. Frankenberg always was against all these investments in refineries.

Q. Was it not agreed at the end of the conference that you and Frankenberg together would come to New York in the fall of 1937 to discuss further the merger of the refineries? A. That is possible, though not very probable.

Q. At any rate, you and Frankenberg did come to New York in the fall of 1937, did you not? A. It is possible. I don't recollect the occasion, but I came to America quite often, at least once or twice a year.

Q. And is it not true that in the autumn of 1937
1056 you and Frankenberg and Mr. and Mrs. Crittenden had dinner together at the Plaza Hotel in New York? A. That is possible, that's where I always lived.

Q. And that is where Frankenberg is customarily staying, isn't it? A. No, he has always stayed at the Ritz-Carlton.

Q. In 1937 he stayed in the Plaza, did he not? A. I can't recollect that.

Q. This dinner was purely a social event in which no business was discussed? A. If a lady is present, one does not discuss the merger of refineries.

Q. And you didn't, did you? A. It is very unlikely.

Q. In fact, you personally did not engage in any business conversation with Crittenden in New York in the fall of 1937, did you? A. I wouldn't make such a statement, Mr. Burling.

Q. Did you or didn't you? A. If I met Crittenden, I certainly discussed our refinery problems. They were difficult enough, and it was very likely that whenever I met him personally, outside of a party, that I discussed business matters with him.

Q. Did you have any business discussions with him
1057 in New York in the fall of '37? A. If I met him there, if he was there and if we met, we certainly had business discussions.

Q. You recall that he was in New York, because you testified that you had dinner with Crittenden and his wife at the Plaza, did you not? A. That is what you stated, and I told you it was possible that we had such a party.

Q. You don't know whether you had any business conversations with him in New York or not? A. I didn't say I don't know. I said the opposite. I said it is very likely that whenever we met we discussed those urgent problems of the refinery.

Q. Is it not a fact that Frankenberg told you that he, not you, had had a talk in the afternoon before this dinner, with Crittenden, and that he, Frankenberg, had told Crittenden to go ahead and consolidate the oil companies; is that not the fact? A. That sounds very unlikely, because I was the one who made the decisions, and Dr. Frankenberg was against investing any more money into the refineries.

Q. Did you ever suggest to Crittenden that he defraud the United States? A. That he—?

Q. That he defraud the United States.

Mr. Ingoldsby: I object to that question.

1058 The Witness: Definitely not.

Mr. Ingoldsby: All right.

By Mr. Burling:

Q. Did you not in fact make that suggestion to him, and did he not reply to you that you had no idea of the long arm of the United States Government? A. I do not recollect that. And I think it is quite an impossible statement for me to make, Mr. Burling.

Q. Under the management contract you had with Crittenden, he was entitled to keep a percentage of the profits, is that correct? A. Mr. Koch and Crittenden, I think they had formed a partnership, and they got, if I remember correctly, a certain percentage of sales and also a share in the profits.

Q. Did you not suggest to him that he should not take out this percentage, but remit the entire profits to Switzerland, and that you would then arrange to take his share, to have his share of the profiits deposited in Switzerland, and in that way he could avoid the United States income tax? A. I don't recollect to have made such a statement, but what I suggested to him was that he should not draw out his profits but leave them in the corporation and take shares for it.

Q. You said nothing about making deposits to his credit in Switzerland, which would get around the United

1059 States income tax? A. I had no interest in—

Q. Did you say anything like that? A. No, I don't think so.

Q. Going back to the Plaza Hotel in the fall of 1937, did not Houghland also confer with Frankenberg at the Plaza? A. I think he never conferred with Dr. Frankenberg alone, without me or anybody else present.

Q. Did he confer with you and Frankenberg at the Plaza in the fall of '37? A. That is different, that is possible.

Q. The fact is, is it not, in 1937 Houghland had a proposal to set up a series of small subsidiaries, to run smaller-sized gasoline stations? A. If I remember correctly, at this time Mr. Houghland was concerned about a certain chain store taxation, and I think it limited the number of Spur filling stations in various states, and he at this time felt he couldn't expand freely enough, and he thought that Spur, or as the stockholders of Spur, should form several other units. And I think it was done in one case, I think Spur owns the Yinn Oil Corporation.

Q. W-I-N-N? A. Y-I-N-N.

Q. Houghland came to New York in October, 1937, 1060 for the purpose of discussing this with you, did he not? A. You mean this chain store taxation?

Q. Yes, the proposal to set up a number of subsidiary corporations. A. I don't recollect any details.

Q. Is it not a fact that you met him at his hotel and walked with him to the Plaza Hotel, and while you, during the walk he outlined the proposal to you? A. That is probable.

Q. And is it not the fact that when you reached the Plaza you talked to Dr. Frankenberg's room, and he came down, and you introduced Houghland to Frankenberg, and then the three of you went into the Palm Court and had a drink? A. That is possible, if Dr. Frankenberg lived at this time in the Plaza, and we called for him there, that is possible.

Q. And is it not a fact that before you had reached Frankenberg you told Houghland that he would have to make a full explanation of the proposal to Frankenberg? A. No, Mr. Burling.

Q. The answer is no? A. No.

Q. Is it not the fact that at the Plaza Houghland made a full explanation of his proposal, and Frankenberg said he would not accept it? A. That is ridiculous, because I was—

1061 Q. All right, the answer is no. A. No, definitely no.

Q. Is it not also the fact that you walked away from the Plaza with Houghland, and you then told Houghland that you were sorry that Frankenberg had turned down the proposal, because you thought it was a good one? A. That is perfectly ridiculous.

Q. And did you not also say that Frankenberg was your father's financial representative, and that your father had great confidence in him, and that Frankenberg's decision was final? A. That is outright untrue, Mr. Burling.

Q. You are sure that that was not said? A. Definitely sure.

Q. By the way, where is Frankenberg, to the best of your knowledge and belief? A. I think he is in New York.

Q. He did not sail to Europe last Wednesday, as far as you know? A. I think he had to postpone his trip, or couldn't get a reservation, but I think he either sails today or tomorrow.

Q. You have been in touch with him this week? A. Oh, certainly, yes.

Q. When did you last communicate with him?

1062 A. I telephoned him last night.

Q. And when was the last time before that that you communicated with him? A. He visited me.

Q. When? A. Here in Washington.

Q. When? A. I think the day before yesterday.

Q. The day before yesterday—that is on Wednesday, the day he was supposed to sail. Where did you see him? A. I met him at the airport.

Q. What time of the day did you meet him at the airport? A. The plane came—

Mr. Ingoldsby: I object to this. What is the relevancy of this?

Mr. Burling: This man Frankenberg is the managing director of plaintiff corporation. He obviously has, as the testimony that I have just gone through shows, a very important role in this case, and I am seeking to explore the fact that Frankenberg was here in Washington being met by Mr. von Opel, that we could have been told that, and his testimony could have been taken.

The Court: You have established that. The time is immaterial.

Mr. Burling: Yes, Your Honor.

1063 By Mr. Burling:

Q. Did you not go to Nashville, or to a place near Nashville, Tennessee, in the spring of 1938, and stay for several days in Houghland's home? A. Yes, Mr. Houghland invited me.

Q. On this occasion is it not true that Houghland asked you to tell him the nature of the Uebersee Company, and did you not tell him that it had been set up when Adam Opel stock was sold to General Motors, and that the Opel family had been very clever in avoiding foreign exchange regulations in connection with Uebersee? A. That is ridiculous.

Q. You did not say that to him? A. No, definitely not. Don't forget that I was warned against the loyalty of Mr. Houghland.

Q. Did you not tell Mr. Houghland on that occasion that the Uebersee shares at that time had been put through a purported sale, but that the shares were bearer shares in the possession of the Opel family? A. That is ridiculous, no.

Q. Did you suggest to Houghland that he himself could reduce his income taxes by becoming a Swiss national? A. That is fantastic, an American citizen living—how can he become a Swiss national? He has to live in Switzerland 12 years. I couldn't even become a Swiss national.

1064 Q. Did you say anything to him about how he could avoid taxation? A. I was never concerned with other people's taxations.

Q. Did you discuss any business involving the Spur Distributing Company on the occasion of this visit? A. Certainly, that was the purpose of my visit.

Q. Did you do more than drop in for a few minutes at the Spur offices on that occasion? A. I don't recollect the length of times I spent in the office, or in Mr. Houghland's home.

Q. Coming to the summer of 1939, which I will fix in your mind by saying that was just before the war broke out, you were again on the Island of Sylt, were you not? A. Yes.

Q. Before you went to Sylt you sent Houghland a wire—I am sorry, you had received a wire from Houghland in Sanct Moritz, is that correct? A. At which date?

Q. July 20, 1939. A. I must check this date.

Q. Did you receive a wire from Houghland indicating that he was coming to Europe and wanted to see you? A. I think he said that to me. He wired, because at this time I was at some other place.

Q. Where were you? A. Let me see the dates

1065 and I can tell you.

Q. The date is July 20, '39. A. It is possible that I was in Sanct Moritz at this time. It is possible.

Q. What is your best judgment as to where you were? A. At this time I had a compound fracture and was very sick, and it is possible that I was in my home.

Q. I show you Defendant's Exhibit 63 and ask you if you received that wire. A. Yes, I think he wanted to get in contact with me.

Mr. Burling: I offer this in evidence.

(The document above referred to, a copy of a telegram dated July 20, 1939, was accordingly marked Defendant's Exhibit 63 and received in evidence.)

By Mr. Burling:

Q. You replied, did you not, inviting Mr. and Mrs. Houghland to visit your family's estate near Cologne? A. I don't remember, sir, I invited him very frequently to Switzerland.

Q. Did you not invite him to a place you referred to as "our family estate"? A. It is possible. If you show me the wire, I can tell you.

Q. Strike out the word "family." Did you not invite him to "our estate" near Cologne? A. That is pos-
1066 sible. What date is that?

Q. July 22, the day after the preceding wire. A. May I see it?

Q. Sure (handing a document to the Witness). Did you send this wire? A. Yes, I did.

Q. Does this refresh your recollection as to where you were on July 22 or 21? I invite your attention to the words following the signature, "Opel"; and then it says "Kampen Sylt." Does that refresh your recollection as to where you were? A. What is the date of this wire?

Q. July 22. A. No, I think that is not correct, it was sent from this place called Koerbecke.

Q. Where is that? A. That is near Cologne.

Q. You now think you were at Koerbecke at this time? A. At this date that is possible, yes.

Mr. Burling: I offer 64 in evidence.

(The document above referred to, a telegram dated July 22, 1939, was accordingly marked Defendant's Exhibit No. 64 and received in evidence.)

By Mr. Burling:

Q. What were you referring to by the words, "our estate"? A. My father had quite a large forests there.

1067 Q. Where? A. Near Koerbecke, the place mentioned on this wire, and as Mr. Houghland, who was interested in hunting and had expressed his wish to see how that was done in Germany, I told him he could come there and see that.

Q. What is the name of the estate? A. It is called Wilhelm von Opelsche Forstverwaltung.

Q. What is the name Wilhelmsruh? A. That is correct, Wilhelmsruh.

Q. What is that? A. Wilhelmsruh—ruh you call in German, how should I say, a place where you take a rest. Ruh means resting.

Q. And Houghland accepted this invitation, did he not? A. I don't recollect it, because I think there was—he couldn't arrange that.

Q. You do not recall that Houghland accepted the invitation? A. I don't recollect the details, because I, if I remember correctly, Houghland wanted to spend some more time in Ireland or England.

Q. Did you have any communications with Houghland about this? A. You just showed me the wire.

Q. No, I showed you a wire, what you said asking him to come to your estate. A. No, it doesn't say so, says to come to Hamburg or to this place.

1068 Q. Did Houghland accept the invitation? Incidentally, you say, do you not—

Mr. Ingoldsby: Just a minute, please. May I ask what you are reading from?

Mr. Burling: Yes, Defendant's Exhibit 64, which is already in evidence, Counsel.

Mr. Ingoldsby: That is all we want to know.

By Mr. Burling:

Q. "Would meet you any time Hamburg but would like both of you to come to our estate near Cologne after August 18. Regards." A. Yes.

Q. My question is, did Houghland accept that invitation? A. I do not recollect it, I think it did not fit in with his plans, hunting in Ireland.

Q. How did you learn that? A. He must have sent me a wire or a letter informing me.

Q. Do you recall how you were informed that Houghland would not come to your estate? A. No.

Q. I show you Defendant's Exhibit 65 and ask you if you did not receive this telegram. A. Yes.

1069 Mr. Burling: I offer it in evidence.

Mr. Gallagher: What date is that?

Mr. Burling: July 22.

(The document above referred to, a telegram dated July 22, 1939, was accordingly marked Defendant's Exhibit No. 65 and received in evidence.)

The Witness: I invited him for the 18th, and he said he would come August 25th.

By Mr. Burling:

Q. So on July 22 he said, "Delighted to accept invitation. Suggest about August 25 if convenient to you. Address American Express, London." Signed, Houghland. Did Houghland come about August 25? A. No, he did not come because this time was not convenient for me, I had invited him for August 22.

Q. And how did you communicate that fact to him? A. I don't recollection. There must have been an exchange of wires.

Q. Did you not call him on the telephone, you in Cologne, and Houghland in London? A. At what time?

Q. After this. A. May I see the date again?

Q. The date is July 22. A. The date is July 22?

1070 Q. Of the wire. Did you not call him on the telephone? A. At what date?

Q. At any date thereafter? I am asking you how you communicated to Houghland the fact that August 25 was not convenient to you? A. I don't recollect that.

Q. Is it not the fact that you called Houghland on the telephone and urged him to some some time toward the end of August, 1939? A. The wire shows that he did not want to come before August 25.

Q. And about August 20, did you not call him on the phone and say, "Fine, come along on the 25th"? A. You mean invited him at the date he had suggested to come there?

Q. To this estate, Wilhelmsruh. A. To the estate, that is quite impossible, Mr. Burling.

Q. Did you have any conversation over the long distance telephone with Houghland on this occasion? A. From which place?

Q. From any place, to Houghland, in the month of August, 1939. A. I don't recollect any conversation, and normally I don't use long-distance telephones.

Q. So if you had made a long-distance call, it

1071 would have fixed itself in your mind. A. If you give me the date and place, I could check on it.

Q. The day was shortly before the end of August. A. What do you mean, shortly before?

Q. Around the 20th. A. Around the 20th?

Q. Did you not telephone him? A. From where?

Q. From the neighborhood of Cologne. A. No, definitely not.

Q. That is where you were at that time, is it not? A. No.

Q. Where were you? A. In Zurich.

Q. When did you reach Zurich? A. Some time before that date.

Q. When? A. That is a very long time ago, Mr. Burling, but I think a few days prior to the 20th.

Q. At any rate, while you were still at Wilhelmsruh, did you not call Houghland and urge him to come to Wilhelmsruh? A. Pardon me, you are implying me that I was prior to the date I came to Zurich in Wilhelmsruh, which is not correct.

Q. Where were you before you went to Zurich?

1072 A. I was in Kampen, because I had a broken leg, and the doctor had advised me to go to the seaside and into a cool climate.

Q. Did you spend the summer in Kampen? A. No.

Q. How long a time did you spend in Kampen? A. I think I was there about, offhand, two or three weeks.

Q. Is it not the fact that Houghland said that he would not come to visit you in Germany, because he thought that there was a war going to start? A. That was ridiculous.

Q. Did he or did he not say it?

Mr. Gallagher: What is this time again?

Mr. Burling: The same time, Counsel.

The Witness: I just told you I did not invite him at this time to come to Germany, because I had already left.

By Mr. Burling:

Q. Why don't you answer my question? A. Would you repeat it?

Q. Yes. Is it not a fact that Houghland said to you in words or substance, "I will not come to Germany now, because a war is about to break out"? A. That is impossible, because I did not invite him to Germany.

1073 Q. You can say that much more simply by saying no.

The Court: I think we will have to adjourn here.

(Accordingly, at 12:30 p.m. a recess was taken until 2:00 p.m.)

1074 AFTER RECESS

(The proceedings were resumed at 2 o'clock p.m., at the expiration of the recess.)

Mr. Burling: May I proceed, Your Honor.

The Court: Yes.

Mr. Burling: Your Honor, I would like to hand to the Court a copy of the petition for certiorari in Uebersee Finanz Korporation against Rosen, et al., which I have borrowed from the library of the Supreme Court. I cannot have it marked because I promised to return it today to the library of the Supreme Court, and I offer it solely for the filing stamp on the cover.

The Court: All right.

Mr. Burling: May the Record indicate the date, Your Honor.

The Court: Yes, April 17, 1936.

Cross Examination—Resumed

By Mr. Burling:

Q. Mr. von Opel, did you have any discussion with Mr. Davis or with any other lawyer concerning filing a petition for certiorari in the Supreme Court? A. I don't recollect it.

Q. You understand, do you not, that in layman's language filing a petition for certiorari in the Supreme Court is approximately equal to appealing to the Supreme Court?

A. Yes, I think I understand it.

1075 Q. Now, did you have any discussion with any lawyer about appealing to the Supreme Court in

the Gold case? A. I think the lawyers were advised to do the best they could. The details I do not understand because it was a very complex legal matter.

Q. Is it your testimony that Mr. Kresel and Mr. Davis went ahead and filed a petition for certiorari without being instructed to do so by you? A. I think they conferred with the corporation overseas and with the officers.

Q. Who did they confer with? A. I think with the officers of—

Q. Who, please. Name them? A. The officers of the corporation are Doctor Henggeler, Doctor Meier, the president, and Doctor Frankenberg.

Q. And you think the lawyers, before they filed a petition in the Supreme Court, conferred with one of those three men? A. The men—

Q. Answer my question, please. A. All the lawyers, I think they conferred with them. I think it was the natural thing to do. But I have no knowledge at this time. I could check the records, of course.

Q. Did you know that a petition for certiorari was being filed in the Supreme Court? A. I do not rec-
1076 ollect that.

Q. Did you know that the record which contained your affidavit was filed in the Supreme Court of the United States? A. I do not recollect that. But it must have been because it went, I think, first to the District Court and then to the Court of Appeals and then—

Q. Those are courts in New York, are they not? A. I think so, yes.

Q. And then came down here to the Supreme Court in Washington? A. Yes.

Q. And you testified yesterday you took no steps to tell your lawyers that your affidavit was wrong on an important point before the Circuit Court record was filed, did you not? A. No. I think I didn't testify such.

Q. Well, at any rate, that is the fact, is it not? A. It is not even a fact because the affidavit refers to the time, to

all the happenings between this agreement and the time up to this affidavit.

Q. Correct. But did you not testify yesterday that you learned in the summer or fall of 1936 that Frankenberg was not your father's agent and, therefore, that the usufruct had not arisen? A. Yes.

1077 Q. And that is not what the affidavit says, is it? A. The affidavit was filed—

Q. That is not what the affidavit says, is it? A. No. It was filed before this date.

Q. But the affidavit says something which you learned was incorrect, does it not? A. It was not incorrect at the time.

Q. No, but you learned from your father, did you not, that Frankenberg was not his agent and, therefore, that the usufruct had not arisen? A. Yes. My father refused to—

Q. Yes, you learned that, did you not? A. Yes.

Q. Fine. And now I ask you did you take any steps to see to it that an affidavit which contained a misstatement of fact or an error of fact was not filed in the Supreme Court of the United States? A. But this affidavit referred to the time prior to '35.

Q. Yes, but was Doctor Frankenberg ever your father's agent? A. I considered him as such at the time I filed the affidavit.

Q. Did you consider him as such at the time that the record was filed in the Supreme Court? A. Since

1078 the record was filed I hadn't even any idea what was going into this record as far as I remember. It was a mere constitutional question at the time.

Q. In 1935, you say, Meier was president of the plaintiff corporation? A. Yes, I think he was president at the time.

Q. This Eugen Meier, is it not? A. Yes.

Mr. Burling: I ask that Plaintiffs concede Defendant's Exhibits 66 and 66-A. 66 is a German memorandum taken

from the files of the plaintiff corporation, prepared by Doctor Eugen Meier.

Mr. Gallagher: What is that. I did not hear that.

Mr. Burling: I have not read them yet. Will you just give me a moment to read it.

If Your Honor please, these are documents taken from the files of the plaintiff itself. They have been in counsel's possession for some time.

Mr. Gallagher: I am sorry, Mr. Burling. I have never seen them.

Mr. Burling: May I ask, Your Honor, if counsel now withdraws from the stipulation which we entered into, that the genuineness of documents in the plaintiff's own files would be conceded and that we could use the photostats we made.

1079 Mr. Gallagher: I am not asking to withdraw at all, and I am not objecting, I am just trying to get an opportunity to look at it before you continue your cross examining, so I will know what you are talking about to Mr. von Opel.

Mr. Burling: If Your Honor please, I do not think I should be held up while counsel examines documents which have been in his possession for months.

Mr. Gallagher: I cannot have a photographic memory of every document.

The Court: If you have already so stipulated, I will receive it.

Mr. Gallagher: I am not objecting. I just want to read it.

The Court: Well, I will receive it, and you can be examining it.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 66 and 66-A.)

Mr. Burling: I do not intend to examine. I merely wish to read into the Record a paragraph on page two.

This is a memorandum of a conference arising out of the application to the Treasury made by the plaintiff to receive the gold.

The Witness: What date is it, Mr. Burling?

Mr. Burling: This is dated April 4, 1935.

Mr. Gallagher: May I interrupt just a minute,
1080 Mr. Burling?

Are you sure this is out of the Uebersee, or could this be out of Mr. Kresel or Mr. Davis' files?

Mr. Burling: May the Record show that this came from "Blue folder, consecutive No. 22, marked "Gold-Angelegenheit, Mappe IV, 1. Klage (Complaint), etc., 2. Fritz von Opel, 3. Isidor I. Kresel, New York, 4. Davis, Polk, Wardwell, Gardiner & Reed, 5. Dr. E. Meier, Liestal, 6. Dr. I. Henggeler, Zurich, 7. Theodore Hoffacker & Co., New York, 8. Federal Reserve Bank, New York, 9. Treasury, Washington, 10. Ladenburg, Thalmann & Co., New York."

Mr. Gallagher: I do not think our stipulation covers anybody's memorandum as to what took place at some conference.

We merely stipulated as to the fact that these are our records.

Mr. Burling: Are you objecting or making a speech?

Mr. Gallagher: I am speaking to his Honor.

Mr. Burling: I submit that you should make an objection or else let me proceed with my examination.

Mr. Gallagher: I am recalling your statement to his Honor about the stipulation.

The Court: What is the state of the record? Is this offered in evidence?

Mr. Burling: Yes, Your Honor.

Mr. Gallagher: And I am objecting to a lot of statements on the Treasury Department, which are in-
1081 corporated in this memorandum which Mr. Burling is trying now to introduce.

Mr. Burling: If I may point out, this is a memorandum maintained in the files of the plaintiff corporation. I desire to read into the record the fact that the president of the corporation made a representation to the Treasury. Surely a representation to the Treasury, made by the plaintiff's own president, is binding on the plaintiff.

That is all I am trying to accomplish.

Mr. Gallagher: There is no signature on this copy you have handed us.

Mr. Burling: I am trying to read, if Your Honor please, the paragraph beginning on page 2 with the words—

May I not be interrupted by counsel.

Mr. Gallagher: His Honor is still considering the matter.

The Court: What is it you are offering?

Mr. Burling: I offer the document but if there is any difficulty about it, I will restrict it to the paragraph on page 2 which Meier, the president of the corporation, is reporting what he told the Treasury about the ownership of the plaintiff's shares.

Mr. Gallagher: Your Honor, our objection still goes to the point. Until Mr. Burling submits as to who this memorandum is signed by and who prepared it, we still
1082 have objection to it. The fact that it is in our corporate files, in my opinion, is meaningless as to its admissibility.

We are not denying the fact that the memorandum is in our files.

Mr. Burling: I will ask the witness if he can identify the signatures on the document.

By Mr. Burling:

Q. Will you look at this document and see if you can identify the signatures?

(The document was handed to the witness.)

May I meanwhile point out that it recites that those present were B. Bernstein, attorney of the Treasury Department, Doctor Eugen Meier, and Doctor Schlatter of the Swiss Embassy, and it recites that "Bernstein spoke English, I spoke German, Dr. Schlatter interpreted."—

Since I would take it that that made it clear that the "I" must be Doctor Meier.

By Mr. Burling:

Q. I ask you about the signatures which are on the last page, Mr. von Opel? A. It seems to be the signature of Mr. Meier. I am not sure of it, but it does seem possible. You could compare it with other signatures in the files.

The Court: Well, I will receive it.

You say, it has already been testified that Doctor
1083 Meier was president of the corporation at that time.

Mr. Gallagher: We have no objection, Your Honor, if it is signed by Mr. Meier, but our difficulty is we did not know who it was signed by.

The Court: I understand the witness to say it was signed by him.

Mr. Burling: May I read again?

"Upon the question as to the stock holdings of Mr. F. von Opel I replied that I did not know since we had bearer shares. I knew positively that no American citizen and no person having residence in America was a stockholder.

"Mr. Bernstein insisted that it should be known to me whether Mr. von Opel had a controlling interest; I replied that a group of which Mr. von Opel was a member had a controlling interest but that I did not know the composition of that group.

"If my information was correct, that group also included other members of the von Opel family. The extent of the participation of Mr. F. von Opel was not known to me."

By Mr. Burling:

Q. Now, Mr. von Opel, have you ever seen this document before? A. I saw it in the files, yes.

Q. When did you see it first? A. Four to six
1084 weeks ago.

Q. Did Mr. Meier ever tell you that he had made representation such as I have just read to you, to the Treasury? A. No, I do not recollect that.

Q. Did you ever tell Mr. Meier that the shares of Uebersee were owned by a group? A. No.

Q. Have you any explanation as to how the president of Uebersee came to make a representation to the United States Treasury that Uebersee was owned by a group of which you were a member? A. Because these shares were bearer shares, and he had no possibility of establishing correctly who was the owner.

Q. In your opinion, was his statement to the Treasury correct or incorrect? A. As far as he could know—

Q. Will you answer my question? A. I think it was correct, yes.

Q. That is, you think it is correct that at the date of this conference— A. He mentioned—

Q. Wait a minute, please.

April 4, 1935, it was correct that the Uebersee shares were held by a group of which you were a member?
1085 A. No, he did not say so.

Q. Well, I will read it to you again:

"I replied that a group of which Mr. von Opel was a member, had a controlling interest."

Now, is that statement correct or incorrect?

A. But why don't you read the first sentence, Mr. Burling?

Q. Is that statement correct or incorrect? A. It has to be read together with all the other statements.

Q. Well, I understand that he said he was not certain but Mr. Meier states in this memorandum that he had told

the Treasury officials, "A group of which Mr. von Opel was a member had a controlling interest," and you say that is correct? A. No, I do not say that. I say you must read it altogether.

Q. Well, how do you read it altogether so that it is not incorrect? A. Please read the first sentence.

Q. I have read it. You read it now and tell me how it is not incorrect. A. "I replied, as we have already stated, by cable that he"—meaning myself—"is a share holder"—

Q. Where do you see this? A. Paragraph first.

1086 Q. That does not say he was the shareholder. It says he was stockholder, does it not? A. "He is stockholder", yes.

Q. I see— A. "Depositor of securities and he advises the corporation in technical matters."

Q. The statement that the corporation was owned by a group of which you were a member, how is that correct? A. Mr. Meier had no possibility of finding out who owned those bearer shares.

Q. So your testimony is that the president of the corporation, when being questioned by the United States Treasury, made representations of fact when he had no possible way of knowing what the facts were. Is that right? A. That is what he stated here.

Q. Mr. von Opel, you can read the words; can you not? A. Yes.

Q. "A group of which Mr. von Opel was a member, had a controlling interest." A. But don't forget about the first sentence.

Q. I read the first sentence. I am talking about this sentence. A. And please read the second para-

1087 graph, too.

Q. Yes. A. You are just picking out one sentence out of the group.

Q. Yes, but that one sentence either is true or it is false, or else it is a statement of fact made by a man who

does not know anything about it whatever. A. Please, read the entire paragraph, Mr. Burling. You are pulling out just one sentence out of a half a dozen.

Q. Of course I am, and I want to know what does that sentence mean to you, in the context or out of the context. What does that sentence mean to you? Who is the beneficial owner of the shares? A. I can not say that. I have to read the full letter, not just one line.

Q. Would you say that you apply the same techniques in reading this that you have applied in construing Plaintiff's Exhibit No. 5? A. I always try to understand a letter fully. And I think it is impossible to just take one sentence and just read this one sentence.

Q. Is there anything in here which in any way explains a way the fact that Meier represented to the Treasury that Uebersee was owned by a group, of which you were a member? A. He hadn't even any contact with me, and was not in Switzerland. I met him in New York and I told him the facts in New York.

1088 Q. Do you think he came back to the Treasury and said he had been mistaken? A. I don't know whether he did it or not, but we filed—I think he made an affidavit, didn't he?

Q. I do not know. A. Well, yes, you find this in the Gold case book. Why do you overlook this fact?

Q. Did Meier ever file an affidavit in which he said he misrepresented the facts or had been wrong when he told Bernstein of the Treasury— A. He filed a complete affidavit.

Q. No, wait a minute. Did he ever say he had been wrong in the course of this conversation with Bernstein? A. As far as I know it was filed with the same part of the Treasury Department.

Q. Sure, but that does not take back the statement that he made to Bernstein, does it? A. I think definitely it does.

Q. You think it does.

Now, it goes on to say:

"If my information was correct, that group also includes other members of the von Opel family."

He said that, didn't he? A. Yes.

Q. Now, as a matter of fact, Meier's affidavit did not take back his oral misrepresentation at the Treasury, did it? A. I didn't read it.

1089

Q. I want to read with you the following—I am reading from page 26 of the record in the Gold case, folio 77:

"It has always been my understanding that Mr. Fritz von Opel, a German citizen and resident of Sanct Moritz, Switzerland, either owned personally or held for members of his family a substantial number of shares of Uebersee Finanz-Korporation, A. G., but I have no personal knowledge on the subject."

A. But would you please leave me the record here.

Q. Sure, yes. A. May I read the next paragraph?

Q. Read anything you think will help you? A. "On May 14, 1935, I heard Mr. Fritz von Opel say that he was the owner of substantially all the stock of said corporation, subject to the right of usufruct reserved in his father Wilhelm von Opel."

Q. But he did not specifically do anything to take back the oral statement he had earlier made, did he? A. It was addressed to the Treasury Department.

Q. Now, coming to another topic you testified, I think, that Doctor Frankenberg was not with you in Montreal in 19— A. I didn't say that, Mr. Burling. I said I didn't remember whether he was there. It was quite possible.

1090

Mr. Burling: Your Honor, we have a telegram here in German and which we have hurriedly translated. I ask leave to have the English translation marked and for per-

mission to substitute a properly typed copy of the translation later.

The Court: All right.

Mr. Burling: This bears penciled corrections.

I do not want anything more than this signature in it.

Mr. Gallagher: Before you go on with the interrogation about it, I wanted to know what the contents of the communication is that you are going to inquire about it.

Mr. Burling: Since counsel keeps stopping me on the grounds they have not seen the documents, I want the record to show that this, again, is something which we borrowed from counsel and photostated and returned to them. It is in their possession.

In view of the great length of this examination, Your Honor, I think we should go ahead, and unless there is an objection to the translation, we should be permitted to proceed. If there is one, we can take it up then.

The Court: If there is any way to make time, I would be glad to do it.

1091 By Mr. Burling:

Q. Will you examine Defendant's Exhibit No. 67-A which is conceded to be a document taken from the records of the plaintiff corporation, and see if that refreshes your recollection as to whether Frankenberg was with you in Montreal? A. Yes.

Q. Was he? A. Yes, apparently.

Mr. Burling: I offer 67 and 67-A.

(The documents referred to were marked and received in evidence as Defendant's Exhibits Nos. 67 and 67-A.)

By Mr. Burling:

Q. Did you have a conversation over the phone with Mr. Houghland in late August, 1939, in the course of which

you said to him, "Your refusal to come to Germany is foolish. There will not be any war. We are just going to take a little slice off Poland, and the British won't fight." A. That is ridiculous. I did never make such a statement.

Q. Did not Houghland tell you that he would think it over and call you back in Germany the next day? A. Tha is very unlikely.

Q. Did not Houghland call you the next day and
1092 didn't you tell him again— A. Call me where, Mr. Burling? Could you make that a little bit clearer to me?

Q. Somewhere in the neighborhood of Cologne? A. And when?

Q. I have fixed the date repeatedly. A. What is the date? Between the 25th of August—

Q. Around the 20th of August, 1939? A. After the 20th or before the 20th?

Q. Around the 20th. I do not know the exact date. A. What do you mean by "around." How many days around?

Q. Are you in any doubt as to whether you did or did not have this conversation with Houghland? A. Definitely not.

Q. You did not say to Houghland, again, on a second occasion, the day after a first conversation, that there would be no war? A. If I recollect correctly, I invited him to Switzerland at this time, and I told him—he was very scared that he might be surprised by war, and could not return to the United States.

Q. Are you not thinking of an invitation you made Mr. Guyette? A. At what time?

1093 Q. At about this same time? A. Where was Mr. Guyette at this time?

Q. In Lowell, Massachusetts. A. And you mean in August, 1939?

Q. No, around in the latter part of 1939? A. Now you mean and even say the latter part of '39. I could have invited him before it had broken out.

Q. Did you not write Mr. Guyette and tell him he could come by way of Italy and Switzerland? A. If he wanted to talk to me it is possible.

Q. And you urged him to come, did you not? A. I invited all my presidents of my corporations repeatedly.

Q. I am just asking if you are not confusing an invitation to Guyette with a telephone conversation with Houghland? A. I do not think so because I certainly had no telephone conversation with Mr. Guyette.

Q. And didn't you say to Houghland that he really ought to come to Germany and to meet your father because he was really working for your father? A. That is a ridiculous statement.

Q. Perhaps so, but did you make it? A. No, I did not make it.

Q. And didn't you say to him that it would be
1094 valuable both to your father and to Houghland for the two men to meet? A. No. Because if I had wanted them to meet, the best time was his trip to Germany in '37, and not any date before the outbreak of the war.

Q. You testified this morning that it was not your custom to make long distance telephone calls: Is that right? A. Whenever I could I avoided it and used wires.

Q. In February, 1941, did you have a telephone conversation in West Palm Beach, Florida, with any person in Budapest, Hungary? A. I was asked by wire to telephone Budapest, and I didn't do it.

Q. You did not do it? A. No.

Q. Did you have any long distance telephone calls between Palm Beach—I believe I said West Palm Beach before—I meant Palm Beach— A. Yes. What was your question, did I have any—

Q. —telephone calls in February, '41, between Palm Beach and Hungary? A. No.

Q. You are sure of that? A. Yes, I am sure of it.

Q. At any rate you are sure, I suppose, that you
1095 did not talk for a half an hour on the trans-Atlantic phone? A. That is fully impossible.

Q. Did you ever tell anybody that you had been talking for half an hour to Hungary in February, '41? A. That would have been an outright lie.

Q. I did not ask you that. I said did you ever tell anyone that? A. No.

Q. Do you know a man named Calvin Houghland? A. He is Mason Houghland's boy, yes.

Q. Do you know him? A. I met him once or twice, yes.

Q. Well, he visited you in Palm Beach, didn't he? A. After his marriage he passed through Florida and stopped a day in Palm Beach.

Q. And on that occasion didn't you talk to Hungary for half an hour on the trans-Atlantic phone? A. It is an invention. I never did such.

Q. Didn't you tell him that you had that day talked to Hungary? A. I did not. That is fully impossible.

Q. You did not tell him that? A. No.

Q. You are absolutely certain? A. I am abso-
1096 lutely certain, and the best thing is you check the record in Palm Beach and there you will find it.

Q. I believe you can permit me to direct the preparation of this case. If you want to have your counsel check the record you, of course, are at liberty to do that.

Now, have you ever engaged in any activities related to production of bauxite? A. Yes.

Q. To the best of your knowledge and belief has Uebersee Finanz-Korporation in any way been involved in these bauxite activities? A. Transdanubia is a corporation which is a Hungarian corporation, and which I founded in 1935, and was owned by Uebersee.

Mr. Burling: At this point, if Your Honor please, I wish to read defendant's interrogatories and plaintiff's answers thereto.

By Mr. Burling:

Q. Did Transdanubia have any interest in any bauxite mines or bauxite mining rights at any time? A. Did Transdanubia, you mean?

Q. Yes? A. Yes, certainly.

Q. And you just now said that Transdanubia was
1097 owned by Uebersee, have you not? A. Yes.

Mr. Burling: If your Honor please, we asked at question 28: "State the nature of plaintiff's interest in any corporation, holding or owning bauxite mines in Hungary, at all times from October 5, 1931, to June, 1942."

And this is what we were answered:

"The plaintiff had no interest in bauxite mines or bauxite mining rights in Hungary at any time. The plaintiff has no interest in any corporation holding or owning bauxite mines or mining rights in Hungary from October 5, 1931, to June, 1942."

Mr. Ingoldsby: Your Honor, we will agree at this time that we were in error in making that reply. I must say that the mistake was not known to me until the present moment. I think that the reason for our statement will become perfectly apparent as the testimony develops on this.

The Court: Well, I guess we had better not argue it now. I will hear it later.

Mr. Burling: I want to point out further that the date of the interrogatories, the answer to the interrogatories, is November 26, 1948.

By Mr. Burling:

Q. You organized or caused to be organized a
1098 corporation called Transdanubia Bauxite? A. Yes, that is correct.

Q. And how were the shares owned? A. I think the corporation has a capital of—nominal, capital of 300,000 pengos paid in, if I recollect correctly, were 90,000 pengos.

Q. Yes, and 100 percent of the shares of Transdanubia were held by Uebersee. Is that right? A. They were first—the corporation was founded by me. I held the shares first, and later on they appeared on the books of Uebersee.

Q. When were the shares transferred from you to Uebersee? A. I could not tell that offhand. The books will show. I think it must have been around '37 or '38.

Q. And have you any reason to suppose that Uebersee at any time thereafter, down to June 1942, divested itself of those shares? A. I think they still hold them up to the times they were written off.

Q. When were they written off? A. They were written off, I think, in 1946 as a total loss.

Q. So, until '46, from '38 to '46 plaintiff owned Transdanubia. Right? A. Yes.

1099 Q. Now, will you agree that 90,000 pengos—pengo that is the Hungarian unit of money, is it not? A. Yes.

Q. —was equivalent to approximately 78,000 Swiss francs? A. You mean 90,000 pengo are how many thousand francs?

Q. 78,000? A. Yes. Those rates, they change from time to time. It is approximately correct, yes.

Q. Well, at the time you made the investment, that is approximately right? A. Yes.

Q. And is it not true that Transdanubia then acquired a half interest in certain mining rights, mining property, near Budapest? A. That is not correct, Mr. Burling.

Q. Please correct me? A. It is vice versa. I acquired those rights and later on transferred them to Transdanubia, to the corporation.

Q. When did you acquire the right? A. Around—well, that is hard to say. Before the end of '35.

Q. And the rights you acquired constitute a fifty
1100 percent interest in certain mining properties. Is that correct? A. You cannot express it this way. May I tell you?

Q. Please do. A. Around '34 or the beginning of '35 I went into Hungary and contacted the Hungarian Government and the Hungarian Government offered me some mineral rights on sites which the Hungarian Government owned. And at this time they were very eager to get capital in to build up some competition against Hungarian Swiss bauxite trusts, and I was given option by the Minister of Industry and Commerce for about 4 or 6 weeks, or you better call it "right of refusal"—

Q. Well, without going into the detailed history, you, in some manner or other in 1934 or '35, acquired mining rights, did you not? A. Mining rights is not the proper expression.

Q. Well, state what it is, please? A. It is mineral rights.

Q. Mineral rights? A. Mineral rights, yes.

Q. And where were those mineral rights located? A. In Hungary.

Q. Can you be more specific? A. Near Sumeg.
1101 Q. Will you spell that, please? A. S-u-m-e-g.
It is a vicinity of Lake Balaton.

Q. And you acquired 50 percent of these rights and the other 50 percent were held by someone else? Is that right? A. I have to explain that a little further. Some men who offered me those rights under an option agreement, transferred 50 percent of some small part directly to me without exercise of the option agreement.

Q. And in 1936 you transferred your rights to Transdanubia? A. Yes.

Q. And Transdanubia continued to hold those rights, at least until 1940, did it not? A. That is correct.

Q. And the other 50 percent of the rights ultimately came into the ownership of Giulini Brothers of Ludwig-

shafen. Isn't that right? A. The owner, Koranyi, who owns those 50 percent, and who had given me this option agreement, delivered bauxite, made a contract of delivery with Giulini, say it was several hundred thousand pengos, and he stopped delivery, and they sued him for repayment, and in some way or other they owned or controlled these other 50 percent.

1102 Q. Now, on September 1, 1939, Transdanubia held 50 percent of these mineral rights and Giulini held the other 50. Is that right? A. It is not quite clear to me to which extent Giulini was the owner. I think they only had the power of exercising these rights as long as his loan given to Koranyi was not repaid.

Q. And bauxite is the ore from which aluminum is refined, is it not? A. Yes, definitely.

Q. And Giulini Brothers were one of the four or five largest producers of aluminum in Germany, were they not? A. Yes.

Q. And their plant was at Ludwigshafen? A. Yes.

Q. And is it not true that some mines were started which were named Edgar-Margot mines? A. The first mine which was started was Margot. That was a mine I opened and closed because it was not productive.

Q. Well, were there not some mines— A. And I think the Edgar mine, if I recollect, was a mine Mr. Koranyi started and had to let go.

1103 Q. Now, after the original investment of 90,000 pengos, Uebersee advanced additional sums to Transdanubia, did it not? A. Yes. It was as follows:

Mr. Koranyi had started to produce out of his Edgar mine, and he went broke and did not live up to his obligations and I didn't realize it at this time but I, as the co-owner of Koranyi, was held liable for all damages done, even unpaid wages of Koranyi.

Q. Well, at any rate, some 84,146.90 Swiss francs were lent to Transdanubia by Uebersee in the year 1939. Is not that so? A. Yes. I had to repay all these damages done.

Q. And that sum was increased in 1939 to 89,453.40 Swiss francs, was not it? A. I could not tell you that offhand, but approximately those figures seem to be correct.

Q. Now, the bauxite mines continued to be operated at least until 1941, did they not? A. No, they did not operate.

Q. They did not? A. No. They had no capital to operate. That was the difficulty.

Q. I address your attention specifically to the day July 30, 1942? A. July?

1104 Q. July 30, 1941. Were the bauxite mines being operated on that day? A. I could not tell you.

Q. Did you swear on an affidavit on that day that the bauxite mines were being operated? A. I was asked it by some Miami hearing boards.

Q. I am coming to that. But did you swear on July 30, 1941, that the mines were being operated? A. At this time they were still owned by Transdanubia.

Q. That is not the question. The question is did you swear on that date that they were being operated? A. (No response)

Q. I show you an affidavit and ask you if this is your signature on it? A. That is my signature, yes.

Q. In this an affidavit which you submitted to the United States Treasury? A. May I see it?

Q. Yes.

(The affidavit was handed to the witness.)

A. I do not see that anywhere, Mr. Burling.

Q. I just asked you, Mr. von Opel, if you submitted this to the Treasury? A. That is possible, yes.

Q. At any rate, you executed it? A. Yes.

1105 Mr. Burling: I offer it in evidence.

(The documents referred to were marked and received in evidence as Defendant's Exhibit No. 68.)

By Mr. Burling:

Q. Did you swear—I am reading if Your Honor please from the bottom of page 4 and the top of page 5—"By far the greater part of the proceeds of the sale of the 10 percent of the Opel stock to General Motors have been invested in various American enterprises which I shall now mention.

"Besides these American interests, Uebersee has only a relative small investment consisting of a plantation in British East Africa, a part interest in a mine in Hungary which is operated under a five-year lease by Hungarians, and a House in Sanct Moritz, Switzerland."

A. Yes, that is correct.

Q. Now, does that refresh your recollection that as of that date the mines were being operated? A. The last I heard I think was in April or May, 1941, I had an exchange of wires with the Transdanubia corporation, and its two managers and they wanted me to invest capital so that they could go on deep mining—no, so they could go over to deep mining, and I refused it.

Q. Well, if you did not know whether or not the
1106 mines were being operated on July— A. They wired back that they needed funds. I replied that I would not give them any more funds and they, in turn, wired and said since they would be forced to sell out or lease, and send in another wire saying to them how could they lease, and I told them to do anything what was, in their opinion, the best thing to do, and I think the last suggestion was a five-year lease.

Q. Well, so that you did think, on July 30, 1941, that the mines were being operated? A. I was—

Q. Well, did you or did you not? Can't you answer that? A. I was under this impression.

Q. That they were, in fact, being operated? A. That, so to say, some managers had carried out what they had suggested two or three months previously. After that time I had no new knowledge.

Q. We will go on much faster if you will just answer my question.

Did you not think on July 30, 1941, that the mines were being operated? A. Not operated by Transdanubia.

Q. Well, were they being operated by anybody? A. By another party, that is possible.

Mr. Burling: I now offer, as admissible on its face,
1107 Defendant's Exhibit No. 69, which is a certified copy of an affidavit taken from the files of the Treasury Department.

By Mr. Burling:

Q. Now, this is an affidavit, is it not, Mr. von Opel, signed by Isidor Kresel, your attorney, and filed with the Treasury in your behalf? A. May I see it?

Q. Yes.

(The document was handed to the witness.)

I beg your pardon, I made a mistake. It was filed on behalf of the plaintiff corporation Uebersee, was it not? A. I will have to check that, please.

(The witness examined the document.)

Yes, I think it is, Mr. Burling.

Mr. Burling: All right, I offer it in evidence.

(The document referred to was marked and received in evidence as Defendant's Exhibit No. 69.)

By Mr. Burling:

Q. Now, Mr. Kresel did not have personal knowledge of the bauxite transactions, did he? A. I don't know, I don't think so, no.

Q. His affidavit was filed on the basis of what you told him about it, is that not true? A. I assume so, or what he heard from Uebersee in Switzerland.

1108

Q. Was Mr. Kresel in communication with persons in Switzerland at this time? A. He was in frequent communication. At this time, I could not say.

Q. And the persons you referred to are officers of Uebersee. Is that right? A. Yes.

Q. At any rate, on October 16, 1941, Mr. Kresel swore as follows:

"The business"—that is to say, the business of Uebersee—"has not since January 1, 1939, nor is it presently affiliated with, owned by, or possessed of any interest in any other enterprise, foreign or domestic, (except as noted under Number "3" above) and except that it has a small investment in a plantation in British East Africa, a part interest in a mine in Hungary, operated under a five-year lease by Hungarians, and a house in St. Moritz, Switzerland."

So that as of October 16, Mr. Kresel was advised either by you or by plaintiff's officers, that bauxite mine was being operated by Hungarians under a five-year lease. Isn't that correct? A. That was the impression I was under after this exchange of cables which ended in either April or May of '41.

1109 By Mr. Burling:

Q. Going back to Uebersee, is it not true that Uebersee's loan to Transdanubia was increased to 102,360 francs in 1940? A. Without seeing the books, I couldn't answer this very well.

Mr. Burling: I ask that a photostat of book called "Inventurenbuch", which is one of the books of account of the plaintiff, which I believe is conceded—

Mr. Ingoldsby: Surely.

Mr. Burling: —be marked.

(The photostat of "Inventurenbuch" was accordingly marked for identification as Defendant's Exhibit 70.)

By Mr. Burling:

Q. What does the word "Inventurenbuch" mean in German? A. I don't know in which sense it is meant. In Switzerland I think—

Q. What is a "Inventurenbuch"? A. I think it means investment.

Q. Will you look at the sheet marked "Inventur"? A. Yes.

Q. And see if you see any investment in 1938 in Transdanubia. A. In which year is it in the book here?

Q. Excuse me; I opened at the wrong place. A. 1110 I don't see it on this page.

Q. Just a moment. I show you a page which is marked "Inventur", as of December 31, 1938. A. Yes.

Q. Will you look at the first page following that— A. Yes.

Q. And see if there is not an indication of an investment in Transdanubia. A. Yes; it is as I have stated, an investment of pengo 90,000, which is valued at 78,750 Swiss francs.

Q. And do you see any other investment in Transdanubia? A. Yes, there is a so-called current account.

Q. What is that investment? A. That means "loan". I can't read the figure. It is misprinted here. It must be an 8, I guess—84,146.90.

Q. Thank you. Now, will you look at a page beginning "Inventur" as of December 31, 1949. And then look at the second page and see if you can find an account or an investment in Transdanubia as of that date? A. Yes. The shares I think are the same. And the other figure is slightly higher; it is 89,453.40, I guess it is.

Q. Now, will you look at a page marked inventory as of December 31, 1940, and then look at the next sheet following that and tell us what the inventory shows
1111 for that date. A. This is a current account, at this time, it is about 13,000 pengo higher; it is 102,360.

Q. Francs? Or is that pengo? A. Pardon me—Swiss francs.

Q. In other words, the shares remain the same? A. Yes.

Q. And the cash advanced is now 102,000 francs? A. Yes; it is about 12,000 francs more.

Q. Now will you look for the inventory for December 31, 1941, and see what the investment of the plaintiff in Transdanubia was? A. The investment in shares is the same; and as per the date of December 31, 1941, the investment is about 8,000 francs higher, namely, 109,918.50. But I might state here that this date of this balance sheet has nothing to do with the date of the payment.

Q. No; it merely means that during the year 1941. A. Yes.

Q. Now let us take the inventory for—where is the entry relating to— A. I think it is the same.

Q. Let us look now for the inventory for December 31, 1943. What is the investment in Transdanubia? A. It is

exactly the same as before—109,918.50 Swiss francs.

1112 Q. By the way, when did Hungary declare war on the United States? Do you know? A. It must have been in 1942.

Q. Wasn't it December, 1941? A. Or late in 1941, or the beginning of 1942.

Q. Now, will you look at the inventory for December 31, 1944, and tell us what the investment in Transdanubia was? A. It is still the same figure—109,918.50.

Q. Let us look now for the inventory for December 31, 1945. A. Still the same figure—109,918.50.

Q. Now, the German Army surrendered when? A. I think it was in the summer, 1945.

Q. So that all during the war between the United States and Germany, plaintiff had an investment of 78,000 francs in the stock of Transdanubia, and advanced to it and hundred and how many thousand, did you say? A. About 109,000 Swiss francs in advances.

Mr. Ingoldsby: Pardon me. Is that clear? The question, I believe, is framed so that it appears the 109,000 was advanced during the period of the war. I want that cleared up, that 109,000 was advanced prior to the war.

The Witness: Yes, definitely so.

By Mr. Burling:

1113 Q. And what is a dollar equivalent of about forty-five thousand, isn't it? A. It all depends at what time you take it. At the time of the investment, it was about forty-five thousand. Later on the pengo went down and now it is about zero.

Q. When the investment was made, it was the equivalent of about forty-five thousand United States dollars? Isn't that right? A. Roughly speaking, yes.

Q. Now, in addition to that, Uebersee guaranteed loans which Hungarian banks made to Transdanubia, did it not?

Mr. Ingoldsby: May I ask at what time?

Mr. Burling: If it didn't at all, the answer is no.

Mr. Ingoldsby: It is very important that the questions be confined to the time, because these questions relate to the question of doing business with an enemy or ally of an enemy country. I don't think there should be any confusion about the dates on it, because on the dates completely depend whether or not the plaintiff corporation was or was not doing business.

Mr. Burling: Counsel perfectly well knows I am going to come to the date. First of all I want to know if there was any such transaction, and then I will ask when the date was.

By Mr. Burling:

1114 Q. Was there any such transaction? A. May I explain it?

Q. Please do. A. Switzerland was a so-called hard currency country, whereas Hungary was currency controlled. That was the reason that in the beginning, I think around 1937, or 1936, we did not put money into Hungary in pengos, but cause a Hungarian bank to loan the capital to Transdanubia. This was the only way to keep the Swiss francs out of Hungary.

Q. Well, in addition, is it not the fact— A. May I finish, and then we clear it up?

Q. Surely. A. Then later on, after those losses had occurred, there was no need going on with this loan, and so we then paid the Hungarian Bank, and that is how this credit balance appears.

Q. But this guarantee of a loan by a Hungarian bank is a separate transaction from the advances which you

have just testified about? A. In the beginning, in 1937, it went into those accounts we just spoke about. If you are speaking about a guarantee in later years, that is something different.

Q. I will direct your attention specifically now to the year 1942—Mr. Ingoldsby.

Mr. Ingoldsby: Thank you.

1115 By Mr. Burling:

Q. Isn't it the fact that Uebersee guaranteed an extension of a loan of 32,000 francs, that is, that it guaranteed to hold the Swiss Bank Corporation harmless, and the Swiss Bank Corporation guaranteed to hold the Hungarian Escompte and Wechsler-Bank of Budapest harmless, on a guarantee of 32,000 francs? A. It was merely an extension of a guarantee already put up in 1939 or 1940.

Q. I see. But that is over and above the loan by Uebersee to Transdanubia. That is a separate transaction? Is that right? A. It is an entirely separate transaction, because of the need to pay official fees to the Hungarian Government.

Mr. Burling: I ask that Defendant's Exhibit 71 and 71-A be received in evidence as being conceded by the plaintiffs as coming from their books and records.

(The documents referred to were marked and received in evidence as Defendant's Exhibit 71 and 71-A.)

Mr. Burling: And I would like, if Your Honor please, to read one paragraph.

"Pursuant to the telephoned instructions given by Dr. J. Hengeler on March 20 we have caused the Swiss Bank Corporation to extend until June 30, 1942 its guar-
1116 anty of Swiss Francs 32,000 to the Hungarian Escompte and Wechsler-Bank, Budapest. Because of

the fact that the time limit expires on March 21, this was done by telegram."

I should say, Your Honor, this is dated "Zurich, March 23, 1942."

It is addressed to "Overseas Finance" and it is signed "Adler & Co. A. G." And it goes on:

"We take the liberty of debiting you, as of today, with a quarterly commission of one half percent for the period from March 31, 1942 to June 30, 1942."

I ask that Defendant's Exhibit 72 and 72-A be received in evidence, as conceded to be from the files of the plaintiff, and I would like to read that.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 72 and 72-A.)

Mr. Burling: This is a communication dated June 6, 1942, addressed to Bankhaus Adler & Cie., in Zurich:

"In answer to your letter of the 4th inst. we would appreciate if you extended the loan for the Transdanubia Bauxit A. G., Budapest with the Schweizerische Kreditanstalt, Zurich, in the amount of Fr. 32,000, until September 21, 1942."

I ask that there be received in evidence Defen-
1117 dant's Exhibit 73 and 73-A, as being conceded to be from the files of the plaintiff corporation; and I would like to read it.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 73 and 73-A.)

Mr. Burling: This is addressed Overseas Finance Corporation; it is a letter dated Zurich, September 22, 1942, from Adler & Company:

"Subject: Guaranty of Francs 32,000.00 given by the Swiss Bank Corporation, Zurich to the Hungarian Escompte and Wechsler-Bank, Budapest.

"In accordance with instructions, given over the phone by Dr. J. Henggeler on September 19, we have caused the Swiss Bank Corporation, Zurich, to extend until December 31, 1942 its guaranty of Francs 32,000 given to the Hungarian Escompte-and Wechsler-Bank, Budapest. We have requested the mentioned bank to wire the extension in view of the expiration of the period in Budapest on September 21"—and so forth and so forth.

And signed Adler & Company.

By Mr. Burling:

Q. By the way, who is this man Henggeler who is referred to? Do you know? A. Henggeler, as you know,
1118 is the legal counsel of Overseas, and my personal lawyer.

Q. He is also a director of the plaintiff, isn't he? A. Yes.

Mr. Burling: I ask that there be received in evidence Defendant's Exhibit 74 and 74-A, as being conceded to be documents from the files of the plaintiff.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 74 and 74-A.)

Mr. Burling: This is a letter addressed to Overseas Finance Corporation, from Adler & Company, A. G., dated November 17, 1942:

"Subject: Guaranty of Francs 32,000.00 given by the Swiss Bank Corporation, Zurich, to the Hungarian Escompte-and Wechsler-Bank, Budapest.

"We have been advised by the Swiss Bank Corporation, Zurich, that the Transdanubia Bauxit A. G. has repaid the loan arranged, some time ago with the Hungarian Escompte and Wechslerbank, Budapest, for your account by Fritz von Opel. Accordingly, the guaranty extended by the Swiss Bank Corporation for this loan, in the amount of Francs 32,000.00 has lapsed.

"We have credited, therefore, your general account, as of today with Swiss Francs 32,000.

"We have further debited the security account and
1119 credited the guaranty account with corresponding amounts.

"Very truly yours, Adler & Co., A. G."

By Mr. Burling:

Q. Now, it was your impression, was it, that Transdanubia was not doing any business in 1941? A. This guarantee arrangement was made in 1939 and 1940, and the guarantee was only continued to prevent our losing these Swiss francs which had been put up as collateral.

Q. Can you explain, if Transdanubia was not doing any business in 1942, how it managed to repay a loan of 32,000 Swiss francs? A. I never said that they were not doing business. I was, as I previously stated, in the spring of 1941 under the impression that they leased the whole mine, lock, stock, and barrel, to Hungarians. In other words, it was my order to the management to get rid of this entire enterprise.

Q. At any rate, as of April, 1942, Transdanubia had extended, in addition to the $45,000 you have already testified about, had extended a guarantee of an additional 32,000 Swiss francs? A. No, Mr. Burling, that is not a correct way to express it.

Q. Perhaps not. A. Because a loan was given, as I earlier stated, in 1939 and 1940.

1120 Q. I mean the investment. A. So it was merely a technical extension of the credit arrangement, as otherwise we would have lost those thirty thousand or thirty-two thousand Swiss francs which we had put up as collateral.

Q. Yes; but addressing yourself now to April, 1942, the direct investment had a dollar value, that is, on the books, it was the dollar equivalent of about forty-five thousand? Is that right. A. Well, yes.

Q. And in addition to the credit which was extended, there was 32,000 Swiss francs? A. About $7,000, which credit already had, run several years, yes.

Q. But the investment and extension of credit which Uebersee had made at that time was about fifty thousand dollars, wasn't it? A. You stated yourself that those two things have to be kept separate. One was a guarantee, and the other one was an advance carried on current account or investment account.

Q. If you add up the guarantee and the advance and the investment in the shares, the total is over $50,000, isn't it? A. You cannot add those figures. That 1121 is an entirely different character.

Q. I understand that. But they all constitute moneys advanced to or invested in Transdanubia, do they not? A. One was an advance. The other one was a guarantee arrangement.

Q. Fine. And the total of the moneys advanced or guaranteed is in excess of $50,000? Isn't that true? A. The guarantee agreement was an agreement covering about $7,000.

Q. All right. And forty-five and seven add together to a number in excess of fifty, do they not? A. But that is not a proper way of keeping books, Mr. Burling. You cannot just add any two figures.

Q. Well, I just want to add these two figures, and they add to a figure in excess of $50,000, don't they? A. Mathematically speaking, if you add thirty-five and seven, you get forty-two—

Q. And if you add forty-five and seven, it is— A. It is fifty-two; it is fifty-two mathematically speaking, yes, sir.

Q. Did you not testify before the Miami hearing board that the total investment in Transdanubia was about fifteen thousand dollars? A. That is correct. As I explained to you before, the pengo had taken a terrible

dive, and those figures you mentioned of forty-five
1122 thousand are not the correct figures, but merely, so to say, the official rate of exchange. It had nothing to do with the inner purchasing power of the pengo.

Q. But you had put it up in Swiss francs, which stayed on gold all during the war--you had put up the dollar equivalent of forty-five thousand in an investment, plus a guarantee of seven, hadn't you? A. You cannot express it in this way. The investment was made in pengos, and if anybody asked me in 1942 what its value is in dollars, I have to take the rate of exchange into account. If you ask me today, I would say one million pengo is less than one American penny.

Q. And would you say today, therefore, that the amount invested in Transdanubia was one penny? Is that a fair way of putting it? A. Yes; it is totally written off, and apparently a total loss, because the Russians have taken over the entire Hungarian industry.

Q. Yes. But you didn't think, did you, the Miami hearing board was trying to find out the value of the pengo? It wanted to know, did it not, what you had put into it, what you had invested into the bauxite mines. A. No; they didn't ask me how many pengo or how many Swiss francs went into it. They wanted to know, in a rough
1123 guess in dollars, how much it was worth.

Q. Did they want to know how much it was worth, or how much you put into it? A. I didn't put any dollars into it, you see. It was a pengo investment.

Q. You didn't explain that to the hearing board, did you? A. Please?

Q. You didn't explain that to the hearing board, did you? A. Would you please read me the question, Mr. Burling?

Q. (Reading:) "Question: Do you have any investment other than Overseas stock?

"Answer: No; that is my total investments there in Overseas.

"By Mr. Kressel:

"Question: You spoke of what you have in Overseas." And you say: "All the Overseas are mentioned in the questionnaire."

It must be all the Overseas assets—

"In 1932 or 1933 I acquired some mineral rights in Hungary. It is a German corporation and never paid any dividends."

A. Pardon me. That must be a misprint. It is a Hungarian corporation.

1124 Q. And you said it was operated at more or less of a loss, and the total amount was about fifteen thousand dollars? A. Yes.

Q. But didn't you know the hearing board was inquiring into the amount of money you had invested in this bauxite mine? A. In Miami the people wanted to know how big, so to say, my interest was; they wanted to have it expressed in American dollars. So of course I had to keep the rate of exchange in mind.

It wasn't a dollar investment, from the beginning. If they had asked me, "Did you invest dollars, and how many, into it", I would have said, "I did not invest dollars; I invested Swiss francs, and now I have pengos, and in dollars they are worth so and so much."

Q. All right. You knew, at the time you were being interrogated by the Miami board, that they were interested in the bauxite mines because they considered bauxite a militarily important substance. Is that not true? A. Bauxite—the Opel Corporation was the greatest user of aluminum between the two world wars.

Q. This is during the world war we are talking about—World War II. A. Every metal, whether iron or aluminum

or magnesium, becomes armament metal, certainly. And
the Opel factory did entirely the work in introduc-
1125 ing metal into the automobile manufacture. We
were the greatest consumers since before the First
World War.

Q. And you understood that in 1939, 1940, and 1941 the bauxite that was being produced by the mines was going to the Giulini factories at Ludwigshafen? A. They were interested in buying it.

Q. And that is where the output of the mines went, wasn't it? A. I think so.

Q. And you were well acquainted with Dr. Edgar Giulini, weren't you? A. I wasn't well acquainted. I saw him when he visited one of the mines.

Q. And you corresponded with him, didn't you? A. I refused to invest money, if you call that correspondence.

Q. Don't you have any other correspondence with him? A. I don't recollect that. I had an exchange of wires. I did not have a correspondence, Mr. Burling. That wasn't possible, because there was a Bermuda censorship. But I sent everything back and forth by wire, and I would be pleased to show you the exchange of wires. There are at least twenty different wires.

Q. I would be pleased to see them, but didn't you
1126 correspond with Edgar Giulini before you left
Europe? A. I don't recollect that.

Q. You testified, I think, previously that you were unable to take the oath of allegiance to Liechtenstein, because you had broken your leg and couldn't travel there. Is that right? A. You asked me about this paragraph, and I said it wasn't a "must", under Liechtensteinean procedure.

Q. Didn't you also say the reason you didn't take the oath was because you could not travel to Liechtenstein at that time? A. I said I might have gone there, but I was unable to travel—I wouldn't say "unable" to travel; but all travel I could avoid, I tried to avoid.

Q. And when was it you fractured your leg? A. I didn't get the question.

Q. When did you break your leg? A. I think it was in February, 1939.

Q. February 3, wasn't it? A. That is possible.

Q. I show you what looks a clipping from a newspaper and ask you if that refreshes your recollection as to when you broke your leg. A. The newspaper report says February 3; so I think it was the preceding day, apparently.

1127 Q. February 2? A. Apparently, yes.

Q. And when, after this accident, were you able to travel? A. For the first six or eight weeks, if I remember correctly, I was in a heavy plaster cast. Later on I felt a little better.

Q. When were you able to travel, Mr. von Opel? A. What do you call "travel"?

Q. Going from one country to another. A. You see, I had terrible pains at the time. I had a second accident.

Q. When did that take place? A. Please?

Q. When was that, the second accident? A. I think it may have been in January.

Q. Of what year? A. Of 1940.

Q. I see. In any event, you were well enough to travel to Budapest in June, 1939, weren't you? A. I think I went there, yes.

Q. And you sent a telegram to Edgar Giulini, did you not, from Budapest? A. That is possible.

Q. Will you state whether you did or did not

1128 send that telegram? A. Yes. It deals about this stealing of Mr. Koranyi, and I asked him to straighten this matter out, because he was stealing from my property and I had to pay for it.

Q. But, at any rate, you sent this telegram? A. Yes.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit No. 75.)

By Mr. Burling:

Q. Now, when you went from St. Moritz to Budapest, you went through Liechtenstein on the train, didn't you? A. I don't know which way I went. I think I went the other way around, if I remember correctly. About which date are you speaking?

Q. When you traveled to Budapest in June, 1939. A. In June, 1939, it is possible I went by train, because I went a second time later in the fall.

Q. And doesn't the railroad pass through Liechtenstein? A. Yes.

Q. Will you explain why, if you were well enough to travel through Liechtenstein in June, you were still unwell enough to go to Liechtenstein in November?

1129 A. Because my condition got worse, Mr. Burling.

Q. Will you examine Defendant's Exhibit 76 and see if it is not your reply to Defendant's Exhibit 75?

Mr. Burling: I withdraw my last question.

1130 A. Yes, I am saying in it that the stealing of Mr. Koronyi is still going on.

Q. I made a mistake, I thought this cable went the other way. This is a telegram which you sent to Giulini? A. Apparently, yes.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: It is clear that the date is June 9, 1939?

By Mr. Burling:

Q. It bears a stamp, does it not, "Received June 9, 1939"? A. Yes, it bears a stamp, Foreign Exchange Control.

Q. It bears another stamp up here, does it not? A. June 9, 1939.

(The document above referred to, a copy of a telegram dated June 9, 1939, was marked Defendant's Exhibit 76 and received in evidence.)

Mr. Gallagher: Your Honor, could we have a few minutes recess if we are going to five o'clock?

The Court: I am going to stop at four tonight.

By Mr. Burling:

Q. Will you examine the original of which document 77 is a photostat, and state whether that is not a letter which you signed and sent to Mr. Giulini in Ludwigshafen? Just look at the signature. Is there any doubt that it is yours? A. Yes.

1131 Q. And you sent it to Giulini, did you not? A. Yes.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

(The document above referred to, a letter dated July 12, 1939 to Dr. Edgar Giulini, was accordingly marked Defendant's Exhibit 77 and received in evidence.)

By Mr. Burling:

Q. I wish to ask you now to look at the date and the place where it appeared it was written. Will you explain what the words in the upper right-hand corner of the first page mean? A. The date is July 12, '39.

Q. And where does it indicate that the letter was written? A. It is the words we mentioned this morning, Wilhelmsruh.

Q. What does the word "Jagdhaus" mean? A. That means hunting lodge.

Q. I do not intend to ask you further about that. A. Of course, my father's place.

Q. Will you look at an original letter, of which Defendant's Exhibit 78 is a photostat, and way whether this is not a letter which you wrote to Mr. Giulini.
1132 (Pause) Can't you tell from your signature? A. Yes. I just wanted to read it.

Q. You can hold it. I want to read the section headed "Shipments."

Mr. Burling: I offer this letter in evidence.

Mr. Gallagher: No objection.

(The document above referred to, a letter dated July 31, 1939, to Giulini Bros., was accordingly marked Defendant's Exhibit 78 and received in evidence.)

By Mr. Burling:

Q. Did you not write as follows, and the letter is dated Sylt, July 31, 1939: "Upon receipt of an order for about 150,000 tons of which annually 30-40,000 tons would be shipped,—doubling the annual quantity being possible if new mines are opened—I could make shipments at a price of RM 13.20 per ton f. o. b. car or ship Gyoer. Such shipment would be made on the basis of 56% aluminum, 3% silica, and 7% humidity, the price to be increased or reduced," and so on. Did you intend to offer to ship 150,000 tons of bauxite annually on July 31, 1939? A. I asked Giulini why I should bear all the trouble I had through Mr. Koronyi, and I told him if he would get rid of Mr. Koronyi, and if I could take over this 50 per cent of Koronyi, and if he gives a long-term contract, I might make deliveries. It says in this letter, of course,
1133 only if you assign all your claims against Koronyi.

Q. At any rate, you were talking about shipping bauxite in quantities of 150,000 tons a year. A. Under certain conditions, yes.

Q. There was a man named Frick in Giulini Brothers who was active. A. I think one of him managers was Mr. Frick. I think he was his purchasing manager.

Q. And he also communicated with you from time to time, did he not? A. That is possible.

Q. I show you a document of which Defendant's Exhibit 79 is a photostat, and ask you if that is not a file copy of a letter from Frick which you received. A. Yes, it is a report on the trouble between Giulini and Koronyi, and the steps the Hungarians had taken to stop production.

Q. And you received this? A. I remember it, yes.

Q. And it is dated September 8, 1939? A. Yes.

(The document above referred to, a letter dated September 8, 1939, to Mr. Fritz von Opel, was marked Defendant's Exhibit 79 and received in evidence.)

1134 By Mr. Burling:

Q. And you replied to Mr. Frick, did you not, in a letter dated September 11? I show you a document on your letterhead addressed to Mr. Frick, which begins, "Thank you very much for your kind letter of September 8," and I ask you if that is not a letter which you wrote to Frick? A. Yes.

Mr. Burling: All right, I offer it in evidence.

(The document above referred to, a letter dated September 11, 1939, to Mr. Heinrich Frick, was accordingly marked Defendant's Exhibit 80 and received in evidence.)

The Witness: I asked him whether it is agreeable to him that I sell bauxite into Switzerland in case the Hungarian Government forces me to produce.

Mr. Gallagher: Does the record reflect, Mr. Burling, that these letters are not from the plaintiff, or Mr. von Opel's files?

Mr. Burling: The record does not reflect anything, either way.

The Witness: They are taken from the files of Giulini.

By Mr. Burling:

Q. Do you know that? A. Yes, I see it from those marks.

Q. You said to Mr. Frick on September 11, "The most important question, of course, is what is being done
1135 about resumption of production." A. Are you quoting from this letter?

Q. The middle paragraph, first sentence. A. Yes, but you have to read it together with the next sentence.

Q. Well, read that, please. A. "Out of the report of my managers, I gain the impression that mining authorities demand continuation of production and that they are going to expropriate the mining rights if we do not follow their wishes."

Q. I show you now a document addressed to you beginning with the words, "We acknowledge with thanks receipt of your letter of September 11, addressed to the individual signing below on the right side." I show you a document, of which Defendant's 81 is a photostat, and ask you if that is not a letter which you received from Frick of Giulini Brothers. A. Yes, it says in this letter that it would be of the most importance to Germany if I would invest large amounts in Hungary to start the production.

Q. Well, they say more specifically that you would do meritorious service for the raw materials supply of the German aluminum industry and the entire war economy of Germany if you would tackle with all your energy the resumption of production in the mines. A. That is correct, Mr. Burling, and I did just the opposite.

1136 Q. Well, we'll see.

Mr. Burling: I offer this document in evidence.

(Accordingly, the document above referred to, a letter dated September 16, 1939, to Mr. Fritz von Opel, was marked Defendant's Exhibit 81 and received in evidence.)

By Mr. Burling:

Q. Did you reply to this letter? A. Would you show me the reply?

Q. I show you a document of which Defendant's 82 is a photostat, and ask you if that is not a telegraphic reply to Frick's letter. Did you send that? A. Yes.

Mr. Burling: I offer it in evidence.

(Accordingly, the telegram referred to, dated "29/27 18 152 1523", was marked Defendant's Exhibit 82 and received in evidence.)

By Mr. Burling:

Q. Now, Mr. von Opel, Frick wrote you saying that you— A. Would you show me the letter to which—which is mentioned in this wire.

Mr. Gallagher: July 31.

The Witness: Could I see it again?

Mr. Gallagher: Defendant's 78.

Mr. Burling: It is the letter of September 16, 1137 your letter September 16 as before stand by my offer July 31. Upon receipt of order immediately ready to travel Budapest for purpose of starting production.

The Witness: May I see this letter of July 31?

Mr. Burling: Yes.

The Court: Let me see that telegram. (The document referred to was handed to the Court.)

I have to adjourn now.

(Accordingly, at 4:00 p.m., the trial was adjourned until 10 o'clock Monday morning, December 20, 1948.)

* * * * *

1143 MANFRED STANSFIELD, appearing as a witness by request of the Court, and being first duly sworn, was examined and testified as follows:

Mr. Burling: Your Honor, at this time I would like to introduce to the Court Mr. Harry Keefer, Special Agent of the Federal Bureau of Investigation, who will
1144 assist us and be a witness in this particular phase of the matter.

The Court: All right.

Mr. Ingoldsby: I understand that according to Your Honor's order, Mr. Stansfield is to be interrogated at the present time on cross examination, the same as though he appeared as a live witness at the time his deposition was read. Is that correct?

The Court: My ruling was that we would supplement whatever testimony had already been given, without striking from the record the testimony offered.

Mr. Ingoldsby: I see.

Examination by Defendant

By Mr. Burling:

Q. Will you state your name, please? A. Manfred Wronker Stansfield.

Q. And in 1931 did you have some other name? A. Manfred Wronker-Flatow.

Q. And that was changed when you were naturalized? A. Yes, sir.

Q. And when did that take place? A. 1946.

Q. Were you educated in the law in Germany? A. That is right—and in Switzerland.

Q. And when did you become a member of the German Bar? A. 1920.

1145 Q. Were you ever employed by General Motors, or retained by General Motors? A. Yes, sir.

Q. When were you first so retained? A. Either 1925 or 1926.

Q. And did you become General Motors' principal German attorney? A. I did.

Q. And in the year 1928 did you negotiate or participate in negotiating any large deal in which General Motors was a party? A. I participated in the negotiations that led to an option for General Motors to purchase the Adam Opel firm, or shares of the corporation, if such corporation be formed.

In the meantime, until the option was exercised, I drew all the agreements in that connection, in addition.

Q. And in these negotiations, which party did you represent? A. At the start I only represented General Motors. After the first meeting in Paris, to my knowledge the Opel brothers did not have a lawyer working for them in these negotiations outside of myself.

Q. Just a moment. Did you represent the Opel brothers, or did you represent General Motors? A. In the negotiations first I only represented General Motors.

1146 Q. Did you ever represent the Opel brothers in these negotiations? A. I would say to these extent—and I will have to go a little bit into this, otherwise it doesn't make any sense, because my position was rather unique.

When the Opel brothers appeared in Paris to negotiate—

Q. When did they appear in Paris? A. In 1928, at the time the first option agreement was negotiated. Then Mr. Hachenburg accompanied them. Mr. Hachenburg brought a very elaborate agreement that he had prepared for the handling of the deal, in case General Motors should be interested in making a deal.

I at that time was of the opinion that the agreement would not be acceptable to General Motors in the form it

was made, and I suggested that a new agreement be drawn up which would not just give General Motors an option to buy physically the plant and the firm and everything that went with it, of Adam Opel, which at that time was not a corporation.

But under the German law at that time, something Mr. Hachenburg had not brought out, there was a possibility for the old owners, and particularly in case of a family corporation, for a family to change from a company that was not incorporated, to a corporation, with great savings of taxes.

For some reason or the other, which I do not re-
1147 call at this moment, but probably I did know at that time, the German Government had an interest in creating corporations.

I suggested to the Opel brothers at this time that the right way would be for them to form a corporation and sell the stock to General Motors, instead of selling physically every item of the plant. This saved both for General Motors and for Adam Opel and for the Opel brothers, and that represented millions of marks—I had better speak in marks—and my whole suggestion was very acceptable to both sides, because it simplified the negotiations at that time, and it enabled General Motors and Opel brothers to arrive at an agreement within a rather short time in Paris at that meeting.

Q. This was a transaction involving over a hundred million marks? Is that correct? A. It was somewhere around one hundred and twenty or one hundred and thirty million marks.

Q. And you were retained by General Motors as their lawyer in this transaction? Is that right? A. That is right.

Q. Did you regard yourself also as being retained by the opposite party? A. Definitely not.

Q. So you were not performing professional legal serv

ices for Opel at this time? A. At this time in Paris,
1148 definitely not, but I did advise them—and I will explain this whole thing.

Q. All right; thank you. In the course of the negotiations between General Motors and Opel, did you come to represent either Wilhelm von Opel or any other member of the Opel family, as their lawyer? A. During these first negotiations—

Q. I mean thereafter, during the negotiations for the purchase. A. This, my suggestion—

Q. Will you answer my question, please?

Mr. Ingoldsby: Just a second.

I think the witness is entitled to courtesy, Your Honor. He started to answer the question.

The Witness: I am trying very hard to be cooperative.

The Court: What he wanted to know was did you represent them at any time during the negotiations.

The Witness: You see, I don't know whether I should call that "representing" them, but I think I did, and for this reason, and with the knowledge of General Motors, because the corporation then was formed, and in the formation of this corporation I was not representing General Motors, but I was assisting the Opel brothers in forming the corporation, in a way that would afterwards be acceptable to General Motors.

By Mr. Burling:

Q. Did you draw the papers? A. Of incorpora-
1149 tion?

Q. Yes. A. I had something to do with them. I couldn't say for certain at this time whether I drew them entirely—

Q. Who drew them? A. I wouldn't know, but probably it could be Hachenburg who was in that.

Q. Don't you know it was Hachenburg who incorporated Adam Opel, A.G.? A. I do not. I don't deny it could

have been Hachenburg, and probably it was. But I cooperated very closely, without ever talking to Hachenburg, I believe, in that connection. But with Opel brothers I had a lot of talk, and with their men, within the six months until it was accepted, the option.

Q. Were you ever retained personally by Wilhem von Opel at any time? A. I would like to make some statement about "retaining." I have formally stated—because I read my deposition now—that I was not retained, and I think I gave a true, narrow interpretation to the word "retained," because there is knowledge of this, of everybody in here, that I did act in a legal capacity for Wilhelm von Opel in a number of cases; and one of them is an agreement that is very much discussed in this Court.

1150 So I have acted, you see. I thought "retained" means you get a retainer, which I never did.

But I acted as a lawyer in a number of cases, which I don't all of them recall, but some I do.

Q. Will you tell us those you do recall, please? A. Offhand, I acted in a legal capacity in many instances in connection with the transfer from Opel to General Motors, where they did not have an additional lawyer acting at all.

Q. Your testimony is that because the Opels did not have a German lawyer in a transaction involving one hundred and twenty or one hundred and thirty million marks, and you were the lawyer for the party on the other side of the transaction, you just helped out and also performed legal services for the Opels? Is that it? A. That is it, very definitely.

Q. That is so? A. That is so.

Q. Have you ever been on any legal transaction of comparable size, where you were representing both parties? A. You see, I don't say I was just representing both parties. I was acting in some capacity, and advising both parties in some respects. That is what I am trying to say now.

Q. Now, Mr. Stansfield, is there a code of ethics which

applies to German lawyers? A. Very definitely,
1151 and I was always very much aware of that, Mr. Burling.

Q. Is there anything in the code of ethics, the German code of ethics, relating to representing conflicting interests? A. If both parties agreed to that, using you as a kind of arbitrator, there would be nothing against it. And, in addition to that, I did not act when the interests were conflicting. In fact, when the Opel brothers, after they had seen me in action in Paris and in Berlin and in Ruesselsheim in connection with this thing, asked me whether I could not also take care of their interests, I told them definitely, only in so far as they didn't conflict with the General Motors interests.

Q. Did you ever tell anybody in General Motors that you were performing any legal services for the Opels during these negotiations? A. John Thomas Smith was absolutely aware of it, and I think others are, too.

Q. And you are aware that John Thomas Smith is dead, are you not? A. I was very sorry to hear that, because otherwise he would confirm what I have said, if he hasn't already.

Q. Have you ever told the story which you are now telling in this Court, before?

1152 Mr. Ingoldsby: Just a minute please.

I object to this being stated as telling a story, Your Honor. I think the connotation is entirely incorrect, and it should be, "Have you ever testified?"

The Court: "Have you ever told this narration?"—is that what you mean?

Mr. Ingoldsby: It connotes that he is telling a story.

The Court: You can interpret it that way.

The Witness: This whole, rather unique situation was fully in the knowledge of John Thomas Smith, and I have told it to him, and I feel very sure that he has told it to others in General Motors.

By Mr. Burling:

Q. You have been interrogated by the Federal Bureau of Investigation, haven't you? A. I don't know how often. I have been, yes.

Q. And did you ever tell an agent of the Federal Bureau of Investigation that you have performed legal services for the Opels in connection with the General Motors sale, and that you had told this fact to John Thomas Smith? A. If I had any occasion to tell them, if the questions were such that they would cause me to give a story like that, I definitely would have told them, because I am telling facts.

Q. That is fine. But I want to know if you did 1153 tell any agent. A. I don't know, sir.

Q. Do you recognize Mr. Harry Keefer, here in court? A. Yes, I have met him several times before.

Q. And he has questioned you about your services to the Opels, has he not? A. He has asked me many questions.

Q. Including the nature of your services to the Opels, has he not? A. He has asked me in connection with a known payment to me of $20,000, which was set up as a loan, about my services to Opel. And I didn't feel that the whole questioning about this loan was proper, because I stated to Mr. Keefer that in our procedure, before you start answering a claim, the claim is put up to you. And I didn't think that Wilhelm von Opel ever would ask me for the repayment of this $20,000. So I said, "I will be willing to give a complete statement of facts in answer to a claim made to me, but not before it was made."

Q. In other words, you did not tell Mr. Keefer anything about performing legal services for the Opel family in connection with the General Motors sale. Isn't that true? A. I couldn't tell you that, because I didn't keep any record of what I said, and I have talked with him

so often. But if I didn't tell it to him, I had no
1154 reason to tell it at that time, probably; but if he had asked me, I would have told it.

Q. Don't you recall Agent Keefer asked you explicitly to give the services you performed for the Opel family? A. He did, and I explicitly refused to go into any details, because the question was in connection with a loan made to me. And I said I was going to spell out what I had against this loan, before the claim for the loan was made up to me.

I don't understand the procedure at all, that somebody comes in to question you about a so-called business claim against you, and wants you to make all your statements before even the claim has been issued against you—and that is exactly what I explained to Mr. Keefer.

Q. Did you not understand, Mr. Stansfield, that you have been accused of blackmailing Wilhelm von Opel in connection with this gift agreement? A. This is so riduculous. If anybody had ever made such a statement that I have really very few words to say about that. I did not have anything to blackmail him about. I been a lawyer of reputation all my life when I was in Germany, and I never had any need or any reason to blackmail anybody for anything, because I had honest money coming to me and only that I have had all my life.

Q. Didn't you realize that was the purpose of
1155 Agent Keefer's inquiry?

Mr. Ingoldsby: I object to that, Your Honor—"Does he know the purpose of Mr. Keefer's statement?"

Mr. Burling: If he does know, he can state it.

Mr. Gallagher: May it please the Court, if I may interrupt at this point, Mr. Burling is talking about a blackmailing situation; and, from his own alleged statement, he never received any statement about a blackmailing until a week before this trial.

The Court: Just a minute. What is the question?

The Reporter (reading): "Didn't you realize that was the purpose of Agent Keefer's inquiry?"

The Court: I guess his realization would be proper.

The Witness: I can answer that question, because if anybody had suggested to me I had blackmailed Wilhelm von Opel, and that Wilhelm von Opel had made any such statement, I would have called him a downright liar if he said Wilhelm von Opel had made such a statement. If anybody was accusing me of blackmail, I would have thrown him out if he had been in my office, and I wouldn't mind who it was.

By Mr. Burling:

Q. Will you now describe all the services which you ever performed for Wilhelm von Opel, which you can recall.

Mr. Ingoldsby: I object, Your Honor. I think it is immaterial that the witness should have to go into
1156 each and every service he has performed.

The Court: If he recalls it. As I remember the deposition, there was some attempt to show that this gentleman was indebted to Mr. von Opel or his estate, and, as I gathered it, some of his testimony might be colored by that. And he said, as I recall from the deposition, that that had been extinguished by virtue of services performed.

Isn't that right?

Mr. Ingoldsby: Yes, Your Honor.

The Court: I think an inquiry as to whether he is biased in this case, or not, would be proper.

Mr. Ingoldsby: What my objection referred to, Your Honor, frankly I don't know the answer, but I assume there were some very personal services involved in there, or services of a personal nature.

The Court: What he is trying to find out is if he had a claim for $20,000; and, if he did, it supports his statement.

Mr. Ingoldsby: Very well, Your Honor.

The Witness: I think I had a very reasonable claim for $20,000.

The Court: What he wanted to know was the nature of your services. You have told of some. Were there any others?

The Witness: There were many others, and it
1157 started almost from the beginning, and other lawyers were not called in. There were many matters of different, where General Motors only knew to sue the Opel brothers, and the Opel brothers said to go ahead. And I settled those differences internally, advising both sides what they should do, and how they should do it.

For instance, I will take one, because I haven't all the facts here with me. I didn't know that I was going to be interrogated about other things than had directly to do with the case.

But immediately after the Opels had sold out, there was a case where the firm called Elite Diamant, where the Opel firm lost millions of marks, and General Motors felt that this should be recovered from the Opel brothers, because it involved a situation which they had known before.

I personally did not feel, I was not convinced, that the Opel brothers knew that events would take the turn they had taken in that case; and I suggested that we settle it. The Opel brothers didn't know how to settle it. And although I was under this pressure from General Motors and from John Thomas Smith to go ahead and sue, I said, "Do you mind if I help the Opel brothers to work it out and settle this, so that we don't go out in the open and drag the name Opel through the courts?"

And John Thomas was absolutely agreeable that
1158 I go ahead.

And I suggested that the Opel brothers set up a fund, a pension, for all the laborers, and that they pay into that fund a certain amount right now, and from then on pay every year a certain amount. And they would not have set up this fund without my advice.

The papers on that are available, and they are all in the Opel plant and you could see it, and also in the files of the Opel brothers probably you will find in my handwriting that I set up the fund for them; I advised them how to handle the whole thing; and I have gone over the facts with them until the whole thing was done. And General Motors accepted it the way that the Opel brothers, under my advice, offered it to General Motors.

That is one case.

By Mr. Burling:

Q. After 1929, when General Motors bought 80 per cent of the Opel stock, you became counsel of Adam Opel, A.G., did you not? A. Yes.

Q. And wasn't the service you just described done in your capacity as counsel for Adam Opel, A.G.? A. No. I would say it was to the benefit, also, of Adam Opel, A.G.

Q. Who was your client in this matter? A. My client was General Motors, or Adam Opel, A.G.

1159 Q. And not Wilhelm von Opel? A. But I asked for them in the legal capacity, advising them how to go about arriving at a settlement.

If they had taken a lawyer for doing this, outside of myself, they would also have had to pay very substantial amounts, because there was a lot of money involved in the whole thing.

Q. Did you ever perform any legal services for Wilhelm von Opel otherwise than as also a General Motors lawyer? A. Yes, I did.

Q. Will you describe those services? A. Well, one of them is in connection with the—well, first I can say in personal matters, his daughter had a lot of family troubles, and in that connection Wilhelm von Opel discussed in detail all the legal and everything that was involved in those personal matters.

Also that would have required another lawyer to do it for him, if he hadn't discussed it with me.

Q. You know, don't you, Wilhelm von Opel had another lawyer named Yaltman handling that marital problem?

A. As far as the outside is concerned, he would have to have another lawyer, because I was not appearing on the records as the lawyer. But I still was advising Wilhelm von Opel internally also on matters that he could discuss with his lawyer. And he would go a little bit wiser in
1160 talking to his lawyer after talking to another lawyer who was very friendly.

Q. Did you perform any other legal services for Wilhelm von Opel? A. I did.

Q. Will you describe them? A. And there were many personal services, legal services, that came up during the time. And a complete list of that I am willing to submit as soon as this claim is brought up against me. I am not in a position at this time, on a minute's notice, without any preparation, to record every detail. But I can give you one very important service.

Q. Please give us as many as you remember. A. Oh, I will give you one very important one.

Q. Please give us as many as you remember. A. All right. Well, my memory at this moment is rather weak, because the way I am interrogated doesn't give me a lot of help in remembering.

Q. Just give us as many as you can remember. A. But I will give you that important case.

Q. Well we will hear that first. A. The moment Wilhelm von Opel had sold out, and in my presence had received for the Opel family the check in payment of the Adam Opel firm, after that we drove home together. And Wilhelm von Opel said to me:

1161 "Now, you know I am not interested in accumulating any more money. It will be difficult enough now to keep what I have gotten. And if you would give that some thought in assisting me in that respect, I will be

very thankful, because I would like to keep it for my family and for myself."

A little later he told me how he got the old people together, in telling them about the sale, and handing out the portions to the various members of the family. All, outside of Fritz von Opel, the others—

Q. Just a moment. Did Wilhelm von Opel hand out any portions of the proceeds of the sale? A. Well, he did in his talk. He didn't pull out or give them a check, or however it was.

Q. Did he offer to give any portion to anybody?

Mr. Ingoldsby: Just a minute, please.

I submit, Your Honor, Mr. Burling was quite insistent that Mr. Stansfield tell what legal services he performed and that he tell about this particular one. I suggest that the witness be permitted to continue and tell it.

Mr. Burling: I suggest that counsel stop heckling, by objections and statements.

Mr. Ingoldsby: I am sorry.

I will ask the Court to rule on my objection.

The Court: I think we had better finish that, Mr. Burling, and then take him over the others.

1162

Mr. Burling: Yes, sir.

The Witness: I have to get the whole situation back in mind, and I am trying to say that at that time Wilhelm von Opel said he told the old generation there, of Adam von Opel, told them very specific stories; but he said—

"You would be astonished how little they are interested in these family stories, and their interest is only what they are getting out of it. I hope my son doesn't feel the same way."

He said, "If you will give some thought how these things can be handled in the future, so that I can protect my part for my family, I will be very happy to have your suggestions."

And, off and on, we discussed the ways how that could be done. And finally came up to the way it was done, in 1931, when every day there were new orders raining from the government, that we decided on how matters should be handled now, which finally was to protect Fritz, when all the others already had been protected.

By Mr. Burling:

Q. Will you go ahead and describe your legal services? A. Well, at this moment, there are no more legal services that I want to go into, because in getting them back into my mind, I get into long stories. But, in connection
1163 with that—

Q. Please, I want you to tell us of each legal service you remember. A. Well, at this moment, I don't remember—

Q. You don't remember any other legal service? A. Except this agreement in connection with this, in detail.

Q. Except your work in connection with the gift agreement? Is that right? A. With the gift agreement, and what I have already just said. And if I remember anything while we are going on, I will come back to it.

Q. All right, thank you. You do not remember any other legal services at the time? A. At this moment, no; but I have my papers home, and I think I can pick out quite a number I can put my hands on.

Q. I am interested in what you remember now. You do not remember any legal services after you drafted the gift agreement, which is the subject of this litigation? A. At this moment, no.

Q. Who was the Chancellor of Germany on October 5, 1931? A. I think for the moment that I don't know.

Q. Perhaps I can refresh your recollection. Wasn't it Bruening who was in the Government? A. In 1931?
1164 Q. Yes. A. I don't need any recollection there.

Q. That is what I am asking you. A. It was Bruening.

Q. In other words, you don't remember performing any legal services for Wilhelm von Opel after the National Socialist Government came into power? Is that right? A. I do in connection with the claims that were then brought up against Wilhelm von Opel by the Nazis.

Q. You performed services in connection with that matter? A. Yes, I was very much involved in it, with Wilhelm von Opel—in fact, with the brothers Opel—very definitely. They called me up very excitedly quite a number of times, and at impossible times. So I remember very exciting and hectic times on that, with the Opel brothers.

Q. You were in the capacity of a witness in that matter, weren't you, and not as a lawyer? A. I was in the capacity of a lawyer, when I was talking with the Opel brothers, and I was in the capacity of a witness when I was questioned by the court or other authorities who had a right to question me.

Q. You told Mr. Keefer, did you not, you performed services for Wilhelm von Opel that were very dan-
1165 gerous, and you risked your very life for him? A. I doubt I said Wilhelm von Opel; but it is absolutely true that for the family Opel I did.

Q. You risked your life for the family Opel? A. I sure did.

Q. Will you state in what manner?

Mr. Ingoldsby: I object. Your Honor, the entire purpose of the—or let me put it in this way:

The only thing that justifies any extensive cross examination of this witness on the matter of legal services performed for the Opels is the matter of what appeared at one time to be an outstanding $20,000 indebtedness.

I submit that the subject has been completely explored, that the witness has established services far in excess of that amount; and I say that additional examination on the question of services performed by this witness is nothing more than for the purpose of annoyance.

The Court: If this is one of the items, it would be material.

Is this one of the items for which you made a charge, this risking of your life.

The Witness: I have not made up any bill for it, Your Honor. I did charge for what I had done—

The Court: In that connection?

The Witness: Well, I would take it as a whole,
1166 for my services I had rendered during that time. I would set that off against the loan. And I feel that any court—

The Court: I understand that. What we are trying to find out now is whether this risking of your life in behalf of the Opel brothers would be one of the items you would actually set off against that claim.

The Witness: I would.

The Court: You would? Then I think—

Mr. Ingoldsby: Your Honor, may I make a further statement on this? The witness, as I understand, is going to reply to a question concerning services which he performed during the period which clearly resulted in the summary decree issued against Wilhelm von Opel. I again point out that a detailed analysis of what happened in those proceedings will again result in our offer to introduce the summary decree which ultimately was issued.

The Court: I am not concerned with that. If you want to offer it later on and he makes it admissible, we will see.

The Witness: Your Honor, may I say, so that I don't have to go into detail of a lot of miscellaneous prosecutions, and those things, that without referring to that at all, I have sufficient material to set it off, and that any court that looks into it from the standpoint of comparing one claim against the other, will accept it. And I don't think that I have any need of putting anything of that—
1167 there is nothing in our code as a lawyer that for risking your life you get any extra payment.

The Court: I understand that. But I think what Mr.

Burling is trying to find out is, as I remember in your deposition, you said you were not indebted to Mr. von Opel for $20,000, or for any other amount, as I remember it. I am not sure; but isn't that substantially right, that you said that?

The Witness: Yes.

The Court: Now, what I asked you was, was this one of the items you had in mind? If it was, then I would have to let him inquire about it.

The Witness: Well, I don't remember that I made the statement to Mr. Keefer that I risked my life. At that time I did not have anything specific in my mind where I would say I risked my life, and for that reason I didn't know that I did.

The Court: What I mean is, was that one of the services you rendered von Opel, you see, which made it true that you didn't owe him $20,000, or do not owe his estate today?

The Witness: I would like to put it this way, Your Honor, that even making an agreement under the laws that were not absolutely in order, under the former government, but which in effect took away from the German jurisdiction certain foreign exchange, under the Nazi rules that
1168 would have been something that would endanger any lawyer, whether it was within the rights at that time or not.

The Court: I suppose he is answering your question now, Mr. Burling. Go ahead.

Mr. Burling: If Your Honor please, part of the point of my questioning is that he has testified now he couldn't remember any services, or at one time he remembers any services—after October, 1931. The Nazis didn't come into power until 1933.

The Court: Apparently he has begun to answer your question, right now. So I say go ahead.

Mr. Burling: Thank you, Your Honor. I didn't understand.

By Mr. Burling:

Q. Will you go ahead and explain what this service was? A. When the Nazis got into power, all these agreements somehow came under scrutiny by the Nazis. And at that time the Opels discussed with me in detail those negotiations and everything that had anything to do with it, and in fact I gave them a lot of advice how to handle it with the Nazis.

Q. By the way, when did you leave Germany? A. November 24, 1933.

Q. You gave them advice, you say? A. Yes, sir.

Q. What service was it that you say involved the
1169 risk of your life? A. Dealing with matters like this was risky, whether you were in the right or not. But I was talking at that time of the Opel family, and I was thinking of something specific, and I am not using that at all, let us say, that specific case, in setting off against this claim.

Q. You knew Mr. Keefer was asking you about services you rendered to Wilhelm von Opel, did you not? A. Mr. Keefer, when we spoke at that time, we spoke for quite some time, and we had a very pleasant talk. It was in no inquisitive way. We were discussing the whole situation and the atmosphere, everything of that kind. And during that conversation, which wasn't fifteen minutes, but—I mean, I will have a hard time saying whether it was one or two hours or three hours—I dropped such a remark, and it wasn't every word for the print. I spoke a lot off the record.

Q. At any rate, you refused to describe the services you had performed for Wilhelm von Opel, did you not? A. To offset my claim, because the claim yet had not been properly prepared to me or presented to me as a claim. And I said to Mr. Keefer that I did not believe that Wilhelm von Opel would make such a claim.

Q. But you did refuse to describe the services? A. On that basis that I have just outlined.

1170 Q. Now, when did you last see Wilhelm von Opel? A. In April or May, 1939.

Q. Where? A. In London.

Q. Did you perform any services for him after you left Germany in November, 1933? A. Not that I recollect at the moment.

Q. Yet in 1937 the $20,000 loan had not been written off, had it? A. No. It had not. It had been kept in the status of a loan, for very specific purposes.

Q. And in that year you wrote to Wilhelm von Opel apologizing for not having paid back the loan, did you not? A. Because Wilhelm von Opel needed something for the Nazis, so that he would not sue me; and I told Wilhelm von Opel that if I am sued—I had told Wilhelm von Opel that before—that if I am sued, I will set off all my services, which will show everything that had to go with it. And I had to give him some plausible reason why he would not sue me at this time; so I wrote him this letter.

Q. But you did write him a letter, did you not, in which you acknowledged the debt and said you were not able to pay it? A. Yes, I did.

Q. That is Defendant's Exhibit 29-A. Do you rec-
1171 ognize that? A. Yes, I have seen it before. Could I just have a look at it again?

Q. (The letter having been handed to the witness): In this letter you indicated an intention to pay back the loan, didn't you? A. I did, yes.

Q. And that was false, was it? A. You see, the way it was intended at that time, in case Wilhelm von Opel would request, I would offset it. But this was written mainly for the Nazi situation.

Q. But it was false, even if it was written for the Nazi situation? Is that right? A. What was false, if you will tell me?

Q. Did you or did you not in fact intend to pay back the loan? A. At that time I did not intend to make any definite statement, the way I am making it now.

Q. I can believe that. But did you or did you not intend to pay back the loan? A. I was keeping that open to settle. At the time when Wilhelm von Opel should make any claim against me, I would have set off against it.

Q. You did not intend to pay back the loan at
1172 this time, did you? A. No, I did not.

Q. And so the statement here that you did intend to pay back the loan is false, isn't it?

Mr. Ingoldsby: I object, Your Honor.

The Witness: The statement was absolutely understandable for Wilhelm von Opel, and Wilhelm von Opel knew he was not going to ask me to pay it back.

By Mr. Burling:

Q. Has the estate of Wilhelm von Opel made any claim against you? A. If it has, I don't know about it.

Q. In any event, prior to October 5, 1931, you were not Wilhelm von Opel's tax expert, were you? A. I wasn't his tax expert, but I knew quite a lot about taxes.

Q. As a matter of fact, wasn't the tax work for both the individual Opels and for Adam Opel, A.G., done by a man named Faust? A. That is correct.

Q. Did you, before October 5, have a discussion with Wilhelm von Opel about the remaining 10 per cent of the Adam Opel shares which he held? A. Would you kindly state that again? I didn't get it.

Q. Before October 5, did you have any discussion
1173 with Wilhelm about the 600 shares of Opel stock which he still held? A. Off and on, quite often, yes, because it was very much on his mind.

Q. And you knew, did you not, that those shares were in escrow in New York? A. I drew the escrow agreement myself.

Q. And didn't Wilhelm von Opel tell you he was concerned about foreign exchange regulations, and that he wanted to keep those shares free of foreign exchange regulations? A. I don't know the details of everything that was said. But I do know the whole atmosphere and the gist of our discussions at that time. And there were several things that always came together. One was to protect the family. One was to take care of Fritz. And the other was, then, that the laws were making it difficult, if you didn't act quickly now, then it might be possible that at some date the door was shut and you couldn't get out.

And, in fact, I was making that very clear to Wilhelm von Opel, because I remembered what had happened to many Russians, and I very well knew how important it was to act at the right time.

Q. And Wilhelm von Opel often used a phrase to you, did he not?—which is, "Money isn't everything, that is, unless you have it invested in Switzerland." A. I 1174 don't remember that Wilhelm von Opel said that. That was a general statement in Germany at that time. It was "Money on loan doesn't make you happy, except you have it in Switzerland," or something like that. I am trying to translate it.

Q. And you told Mr. Keefer that Wilhelm von Opel used that phrase in talking to you, did you not? A. I don't think I did, but it is quite possible. And it is quite possible that Wilhelm von Opel did, because practically it was a joking way of making such statements that went around.

Q. And in the summer and fall of 1931, you considered yourself more or less an expert on foreign exchange matters, did you not? A. Well, I don't have to use the word "expert," but I had to be aware of foreign exchange matters, as a lawyer of a firm that was dealing all the time in exports.

Q. And you knew the term "Auslander" meant, did you not? A. Definitely.

Q. And isn't it true that Wilhelm von Opel said to you that it was convenient that Fritz was an Auslander? A. At the time that Fritz went out, that was already discussed that it would be a very wise thing for Fritz to be outside of Germany and not under the jurisdiction
1175 of Germany, as far as the funds were concerned.

Q. When would you say this was first discussed? A. Oh, I couldn't fix any date at all.

Q. At any rate, during, let us say, the week or two prior to October 5, 1931, didn't Wilhelm von Opel say to you that it was a good thing that Fritz was an Auslander? A. I couldn't recall it. But it was a good thing, in the face of the whole situation. I don't recall what Wilhelm von Opel said in detail in that connection. I mean, we all would have been of the same opinion. He didn't have to say that.
1176 Q. Directing your attention to the time around October 5, 1931, was it your opinion that the relationship between Wilhelm and Fritz von Opel was cordial or uncordial? A. As cordial as it always was, in my opinion.

Q. No more or less than it had been, is that it? A. It was a very natural relation between father and son, nothing specific. They were quite friendly as a rule.

Q. You knew, did you not, that Fritz had married against the very strong opposition of his father? A. His father had discussed that in much detail long before Fritz married, with me.

Q. Didn't Wilhelm say he was very strongly opposed? A. He didn't use those words, but the definite impression was that he was not happy about his son going to marry his wife—his later wife.

Q. Did you not say in your deposition that Wilhelm had told you that he was strongly opposed to the marriage? A. I do not recall every word of my deposition, but in gist he was not for it, so he was opposed to it, and I would repeat that.

Q. When did Wilhelm first tell you anything about intending to make a gift to Fritz? A. I think that started almost immediately after the sale, and I could not go back and make a definite statement when that was, and I
1177 think it was interrupted through the marriage, that it was further pursued, and afterwards it was taken up again actively.

Q. When was it taken up again actively? A. When?

Q. When? A. Some time before the time it was actually made, and I couldn't tell you whether that was one week or two weeks, or two months.

Q. You do not recall how long a period of time elapsed between the time that you heard the gift was in fact to be made and the time it was made? A. I do not recall how much time elapsed, no.

Q. Casting your mind back to October 2, 1931, you did not go to Mannheim with Fritz to talk to Dr. Hachenburg, did you? A. If I did, I don't remember.

Q. You were not even consulted on that day, were you, about a gift agreement? A. I just stated, I don't remember the dates and details as far as that is concerned. I remember that everything happened before Fritz went to the United States at that time.

Q. But you have no more precise recollection than that? A. As far as whether it was on the second or whether it was on the first that we talked about it, I wouldn't
1178 know—probably before Fritz went to Mannheim.

Q. Are you testifying from your recollection now, or an assumption? A. An assumption, I don't recollect that at all.

Q. You were not asked to draft anything until October 5th, were you? A. I don't think I was. Maybe it was discussed before, but that I said I think this is very serious, it should be discussed with Hachenburg first, because I also wanted, felt that there should be a definite opinion about the legality under the foreign exchange laws outside of my own understanding of the laws.

Q. Did you draft an instrument which is Plaintiff's Exhibit 5-A? A. Yes, I did.

Q. And did you draft that unaided, or did you use some earlier draft in preparing this? A. I don't remember that exactly, but I believe there was at that time from Geheimrat —from Dr. Hachenburg some expressed opinion on how the matter should be handled.

Q. Is it not the fact that you used a draft prepared by Dr. Hachenburg? A. Beg your pardon?

Q. Is it not the fact that you used a draft prepared by Dr. Hachenburg? A. Could be quite possible.

1179 Q. And is it not the fact that you did not see that draft until October 5th when it was received in the mails? A. You see, I don't recollect in detail that, but I sure didn't see it, because before it was there—

Q. Is it not the fact that what happened on October 5th was that Wilhelm von Opel and you and Fritz von Opel had a discussion and it was agreed that the Hachenburg draft should be re-written, and didn't you say there isn't time to write a new draft now because Fritz has to leave tomorrow to go to America, and so we will give him a power of attorney and he can use that to sell the shares to General Motors, and when he comes back we will draw up an agreement and pre-date it, using today's date? A. That is a story that has nothing to do with the facts, because I never would suggest that an agreement be predated.

Q. That was not done? A. Definitely not.

Q. You are absolutely sure? A. I am absolutely sure. I know definitely how this matter was handled, and I also know why I suggested that he take a power of attorney with him. That was done, and it was—

Q. Any questions— A. All right, the question is 1180 answered. I was only trying to say it was drawn and signed on that date.

Q. Thank you. The gift involved, according to your understanding, about $3,700,000? A. I don't remember what the amount was, but it was a substantial amount.

Q. What did Fritz say to his father when the instrument was executed? A. Do you really expect me to remember what he said at that moment to his father? Well, I can't tell you. That's all I can say.

Q. You do not remember that he said anything at all? A. Whether he said thank you or anything like that I don't remember. Those are not the things that stuck in my mind.

Q. At any rate, Fritz's gratitude was not so effusive that it fixed itself in your mind? A. I don't remember that he fell around the neck of his father. I have absolutely no such scene in my memory. A lot of things have happened since.

Q. Did you not tell Mr. Keefer here that it was entirely possible that the instrument of October 5 was pre-dated? A. I don't think there is any possibility that I made such a statement, because I never in my whole practice pre-dated any agreement.

Q. So you are also morally certain, are you, that
1181 you did not say to Special Agent Kiefer that it was entirely possible that the instrument was pre-dated? A. I am definite that I didn't say that. It may be that some people pre-date agreements, but I am sure that I never did.

Q. The answer is no to the question? A. I am telling you.

Q. The question is, didn't you say it to Mr. Kiefer? A. No, I know I didn't.

Q. You are morally certain you did not make that statement to Mr. Kiefer, who is sitting at counsel table? A. I stated that, and I repeat it, I did not.

Q. All right. A. If I had made such a statement, it would have been against the facts.

Q. So your testimony is that you drafted this agreement and had it executed on October 5th? A. That is correct.

Q. And on the assumption that the Hachenburg draft was received at Ruesselsheim on the 5th, then your testimony would be that you did the whole thing in one day? A. That didn't mean very much to me to make an agreement like that in one day. I made the whole option in English and German for General Motors and Adam Opel in one day.

Q. You understood, did you not, Geheimrat Wil-
1182 helm von Opel was getting out of Adam Opel? That
was the sale of the last of his shares. A. I clearly understood that.

Q. And you had been put in as general counsel of Adam Opel by General Motors? A. That is correct, by the stockholders, you might say, and also by Geheimrat von Opel.

Q. But 80 per cent of the stock was owned by General Motors? A. That is correct.

Q. And you had been a General Motors representative before General Motors bought in von Opel? A. That is correct.

Q. And in a sense wasn't John Thomas Smith your superior? A. You couldn't call him my superior. He was the general counsel of General Motors, and I was the general counsel of Adam Opel, and Adam Opel was owned 80 per cent by General Motors.

Q. Did you cable John Thomas Smith telling him that Geheimrat von Opel had sold out its shares? A. I would not have had any right, when Geheimrat von Opel used me as his counsel in this private matter, to give information to anybody.

Q. So the answer is you did not? A. Well, cer-
1183 tainly I did not. I was not—under no obligation whatsoever when I was acting as counsel in a personal matter of Wilhelm von Opel to inform John Thomas Smith of what I had done for Geheimrat von Opel and Fritz von Opel.

Q. You did not feel there was any breach of loyalty, or duty to General Motors to tell them that Geheimrat von Opel had given away his shares, and that Fritz von Opel was coming to New York for the purpose of putting the shares to General Motors? A. I do not even follow the line of thought there, so not only I had no obligation to tell them, but I had an obligation to keep anything that happened, where I was acting as a private counsel, secret from everybody who was not directly involved in that deal.

Q. You knew it would be a matter of grave concern to General Motors that Geheimrat von Opel was getting out, did you not? A. I was—

Q. Will you try to follow my questions.

Mr. Ingoldsby: Your Honor, I object to the last question.

The Court: Read the question.

(The pending question was accordingly read by the reporter.)

Mr. Ingoldsby: This question relates to a series, as to whether or not the witness told General Motors
1184 about the gift from Wilhelm to Fritz. I object to the question on the theory that it is completely irrelevant, and I object at this point because it is the first question going into what appears to be a series.

Mr. Burling: I would be glad to make a statement as to the relevancy. This man was a General Motors Lawyer. He had the most obvious obligation to tell General Motors what Wilhelm von Opel had done. He had the most obvious duty to tell them that Fritz was on his way to America to require them to pay $3,700,000. I try to ask these questions to lay a foundation for arguing that since he did not do what he had a duty to do, there is a probability that the thing was not done on the 5th at all.

The Court: The knowledge of that concern I suppose you

would know as well as he would. It is an argumentative question. I will sustain the objection.

Mr. Burling: I am not sure I understand Your Honor's ruling.

The Court: I am sure it is an argumentative question. You have enough to argue it on already.

Mr. Burling: Very well, Your Honor.

By Mr. Burling:

Q. Is it not the fact that the reason you did not tell General Motors about the gift was because it had not happened yet? A. That is definitely not the fact.

1185 The reason—well, there were a number of reasons. I have stated one of the reasons, but if Wilhelm von Opel had sold his stock personally, which he might have done, that would also have concerned General Motors, and nobody could have stopped him, so it did not make any difference in that respect.

Q. At the time that you first saw the Hachenburg draft, what led you to think that a draft that you would prepare would be better? A. I didn't think that any draft that I would make would be better, except it would better serve the purposes at this moment when every minute there were new negotiations, new orders coming out, and I felt that under the circumstances quick action was necessary, and my feeling was that the draft of Mr. Hachenburg, which might have been very good, and definitely, doubtless was very good in every detail, because all his things were good in every detail, that they didn't serve this particular purpose at this moment.

Q. Why not? Will you tell us in what way you thought you could improve on the Hachenburg draft? A. I thought that one thing was important at this moment, and that was to get, if Wilhelm von Opel wanted to save for Fritz von Opel the property that was outside of the country, he had to transfer title and had to do that immediately, and that

all other questions of how matters should be handled
1186 with respect to that, and in connection with Niessbrauch and so on, were secondary questions, and all we had to do at this moment was to take the first step first, and leave the door open for everything else that he wanted to do, or that they wanted to do. And I think my draft did that better.

Q. In other words, the most essential element. A. Agreement of—

Q. Discussion on October 5 was speed, is that right? A. Speed for the transfer of the title from Wilhelm von Opel to Fritz von Opel as a devisen auslaender, to get it out of the jurisdiction of whatever laws there might be coming that hadn't come yet, but could be expected any day.

Q. Do you remember when it was decided that Fritz should take the Europa to America? A. Somewhere around that time.

Q. If speed was of such importance, why not just execute the Hachenburg draft? A. I don't recall the Hachenburg draft, but I was under that impression at that time that that would have been a complication of the whole thing.

Q. Hachenburg submitted a proposed gift agreement, did he not? A. He submitted something at that time that was the basis for my—in some way, also, for my draft. It could have been the opinion or the agreement.

1187 Q. I show you Plaintiff's Exhibit 8-A, and ask you if this is not the Hachenburg draft which you used in preparing your version.

Mr. Ingoldsby: Your Honor, may I make a statement at this point? In view of the fact that this is an incident which transpired about 17 years ago, I don't think that it is quite fair to show only 8 to the witness at this time without also letting the witness know of the summary considerations contained in Exhibit 9.

The Witness: All I could say, this is very probable that I saw that at that time.

By Mr. Burling:

Q. Don't you remember that you used this document? A. It could have been entirely different, and you put it before me as of this date, and probably I did see it at that date. I don't remember that I used it.

Q. Will you examine it and see if haste was of such importance this instrument couldn't have been typed in final form and executed even more rapidly than your preparing a new draft? A. Well, there must have been some things that didn't appeal to the parties, and that I also thought might take more time than necessary in finishing the transaction, finalizing it.

Q. Can you recall what elements there were in
1188 this instrument that didn't appeal to the parties?

A. I don't know the details. At that time they didn't want to tie themselves down so exactly as it was in here, I suppose, and for that reason it was made in a more general way to leave the decisions open for a time when things were not quite so hectic.

Q. What was said to you by Wilhelm von Opel about a usufruct? A. When this gift was given, you have to remember the time in which it was given. At that time—

Q. I wonder if you would tell me what Wilhelm von Opel said to you. A. If you want me to repeat any words that Wilhelm von Opel said, I can't repeat them, but I know, I am trying to give you an idea of what his thinking was at that time.

Q. I wish you would give us an idea of what he said to you. A. He said he wanted to protect this part of his family, his son, to have something for him that would take care of Fritz, who had been removed from his position in industry and so on.

Q. That is not in response to my question. A. You will be good enough—you are asking me—

Q. I want to know the substance of what Wilhelm said to you about a usufruct. A. And in that connec-
1189 tion, as I just now said, although he was taking care of Fritz, he at the same time wanted to protect himself in case Communists or Nazis should take over, or in case of all kinds of contingencies that nobody could definitely specify at that moment. So he wanted to have a possibility of going to Fritz and saying, "Now, I want a usufruct, and here"—and didn't have to beg for it.

Q. So you put a usufruct into the terms of the agreement, is that correct? A. That is correct.

Q. You used the following language, did you not:

"The usufruct in the shares is not assigned to Fritz von Opel, it remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the survivor of them—"

When you drafted those words, what did you think their legal significance was? A. This would give Mr. von Opel and Mrs. von Opel the right any time to ask Fritz von Opel to create a property right.

Q. And legally how would that property right be created? A. By giving co-possession of the shares, just the way that assignments are made.

Q. That is, that Fritz von Opel would deliver possession or co-possession to the parents, and that would
1190 create the usufruct, is that right? A. That is my recollection how it would have been done under the German law.

Q. Did you give any consideration on October 5 to the question of who would be liable for the taxes on the income under this usufructuary provision? A. What income, the dividends that would fall?

Q. Any income that would arise from the property. A. The fruits of the property?

Q. Well, I will start over again. It was contemplated

that Fritz would go to New York and put the shares to General Motors, was it not? A. That's correct.

Q. And it was contemplated that he would invest the proceeds of the sale, was it not? A. It was not contemplated how the whole transaction would take place, it was absolutely possible that General Motors would offer General Motors stock; in fact, at the time the escrow agreement was made, that was foremost in the mind of both parties, that that is how it would be handled. I do not recollect that there was any talk about how that had to be handled when he got to New York, whether he would take money of whether he would take stock, or what General Motors would propose in that respect.

Q. In any event, it was contemplated that the Opel
1191 stock was to be transformed into American securities of some sort? A. Well, it was left to Fritz to do whatever he felt he wanted to do in that respect, and probably in detail discussed with Geheimrat von Opel what they were going to do.

Q. It was therefore assumed that some income would be derived from the property? A. Definitely.

Q. What thought did you give on October 5 to who would have to pay the German income taxes? A. I do not recollect discussing that point, but if I had been asked, I would have said that the party who in Germany got any income out of it would have to pay his income tax on it.

Q. Did you look up the law on who has to pay an income tax where there is a usufruct on property? A. I did not look up the law, and I don't think I would have had to look it up.

Q. Well, what is the law where there is a power to create a usufruct in the future? A. There is no law to that effect, as far as income tax is concerned. In what respect do you mean?

Q. I am talking about income taxes. A. I don't understand the question. If you will be kind enough to word it again.

Q. If Wilhelm von Opel had the right to demand
1192 that a usufruct be created, did he have any income tax liability? A. Under that right alone?

Q. In that situation. A. That right did not incur any income tax at all.

Q. It did not? A. No.

Q. You did not look it up, though? A. I don't think I would have had the idea to look that up, whether having a right would create an income tax if it didn't create any income, because only income is taxable under our income tax.

Q. Did you give any thought to the American income tax law, as to who would be liable? A. I do not remember, and I don't think it was part of what I was asked to perform at that time. But I always gave a lot of thought to taxes in all my dealings. But I do not recollect in this connection that I gave any thought at all to the American income taxes. I knew very little about it.

Q. Did you give any thought to whether this instrument would create any problems in connection with inheritance taxes or estate taxes? A. Well, I knew definitely that a gift involved a gift tax.

Q. I am talking about inheritance taxes. A. Well, the gift tax in that case took the place of the inheritance
1193 tax and the gift tax is very closely connected with it.

Q. And you didn't look up any law relating either to gift taxes or to inheritance taxes? A. If there was any question that I wasn't clear in my mind on, I would have looked up the law.

Q. But you did not look up the law? A. I don't know what I did at that time.

Q. You do not recall having looked up anything at all on this occasion, do you? A. No, I do not recall it, but I do recall that when I drew an agreement that I was pretty clear on what implications it had, and if I was doubtful about any question I used to look up the books. But 17

years back I do not know whether I looked up any certain and specific paragraph at that time, because I knew much more about the law then than I know today.

Q. But you have no recollection of being concerned about any tax problem of any sort in relation to this gift? A. I was also concerned about tax questions in my mind when agreements were made, so I am sure I was in this case, too, but I am sure that somehow I was satisfied by either, by myself looking up the law, or by getting the information from people who were reliable.

Q. Do you think you consulted any people about
1194 this on October 5, 1931? A. In the first place, I think Hachenburg expressed an opinion on that, and I am sure that Dr. Faust did, and I am sure that I always checked those things myself when I did them.

Q. Don't you know it to be the fact that both Hachenburg and Dr. Faust said that tax problems were involved here that would require further research? A. I don't remember that.

Q. Were you told that Hachenburg had said he wanted to have a conference with Geheimrat von Opel about the problems associated with this gift? A. I do not recollect, it could be possible.

Q. You inserted, did you not, in Plaintiff's Exhibit 5, the gift agreement, the following statement in the first paragraph:

"It is our common desire that these stocks remain with the male line of our family in order to preserve a personal connection between the bearers of the name of Opel and the work of our father, Adam Opel?"

A. Yes, I mean it is in there, I can see that.

Q. You added it, did you not? A. I don't remember that, but it's in there, and I drew the whole agreement.

Q. And it is not in the Hachenburg draft, which is Plaintiff's Exhibit 8, is it? A. If you say it's not in it, I
1195 don't want to read the whole agreement for that purpose.

Q. I say it isn't, and I show you Plaintiff's 8. At the very time that you recited that the parents Opel desired to keep the Opel stock in the male line of descent of the Opel family, you knew that Fritz von Opel was going to leave the very next day to sell those share, did you not? A. That is correct.

Q. So that is pure sham, is it not? A. It's not pure sham. It had a very good reason at that time.

Q. But it was not true, was it? A. As far as the Opel father and mother were concerned, I don't even know whether at that time what would happen to the stock later was in any way fixed, but they expressed what their desire was, but they don't say that that's what has to be done.

Q. But it was the expectation and the intent of Wilhelm von Opel that Fritz go to New York the next day and sell the shares, was it not? A. Well, that he transfer them to his name, that was the intent of it.

Q. Have you not just testified that it was also intended that Fritz go to New York and sell them to General Motors? A. To transfer them from the name, from General Motors to him.

1196 Q. Transfer what? A. The stock, this stock.

Q. Opel stock? A. The title, yes.

Q. You drew the power of attorney which Fritz took to New York, did you not? A. That's right.

Q. And that did not say anything about that, did it? A. I don't know what it said.

Q. Will you examine Plaintiff's Exhibit 4-a and say whether that is not the power of attorney. A. This is 2, exhibit 2.

Q. Excuse me.

Mr. Ingoldsby: Your Honor, might we take a couple minutes recess?

The Court: Five-minute recess.

(Accordingly, a short recess was taken.)

By Mr. Burling:

Q. Will you examine Plaintiff's Exhibit 4-A and state whether that is not the power of attorney which you drafted and gave to Fritz von Opel? A. Yes, I drafted that.

Q. Does that indicate that Fritz von Opel was empowered to negotiate to take the Opel shares out
1197 from the escrow agreement? A. Yes, sir.

Q. Was there any discussion of having Fritz take the shares out from under the escrow agreement instead of selling them to General Motors? A. He could have—he still had it open to him what he wanted to do.

Q. Will you answer my question, please: Was there any discussion of it? A. I don't remember that it was discussed in detail what he should do. The main thing was to get it into his own, title transferred to himself.

Q. But as long as they remained German securities, the purpose of getting foreign exchange, getting assets out of Germany would be frustrated, would it not? A. I am not quite clear on that, if a devisen auslaender possessed them.

Q. The Opel shares were not foreign exchange, were they? A. No, and the devisen did not only refer, as far as I remember, to foreign exchange.

Q. How would the purpose which you have described here of having assets abroad in case of a collapse in Germany be served if Fritz held on to the Opel shares? A. Well, it wouldn't, but he would have had a chance to do something about it, and a collapse, in a collapse, as a rule, the industrial undertakings like an automobile plant
1198 was worth more than money in that country.

Q. But the whole purpose was to get assets abroad. A. To have the title transferred to somebody outside of Germany, and that somebody happened to be the son of Geheimrat von Opel.

Q. In your deposition you said at page 177: "I felt that the only thing that was urgent was to get it out of the

General Motors, and have it under the control of Fritz alone, and nobody else had to decide what would happen to the proceeds of these shares but Fritz von Opel, outside of Germany." Is that correct? A. Yes, that was still my understanding.

Q. In other words, it was your understanding of this transaction that Fritz von Opel was to dispose of the Opel shares, isn't that so? A. That it was wise in my opinion, that that's the way to do it, if he really wanted to protect title for himself and not be subject in any way to German jurisdiction.

Q. So it was understood by you and by Wilhelm and by Fritz that Fritz was going to sell the shares, is that not true? A. It was understood that Fritz could make his decision when he came over to the United States and could negotiate. He could have negotiated anything.

Q. Yes, he could have. A. He could have also
1199 negotiated, for instance, what was discussed later, and had been discussed earlier, to put the shares on a gold basis. Then a financial collapse in Germany would not have affected the value of the stock, because it could always then ask for General Motors to take him over and pay him on the gold value.

Q. Now will you explain why you inserted the statement that it was the desire of the parents to keep the Opel stock in the male line of descent of the Opel family? A. That would have been their desire, and probably was there desire at that time, that it stayed in the—but it also was good to have that in from the German standpoint, because at a very early date this agreement would have to be placed in front of the tax authorities for taxation, for the gift tax, and then the people who were in Germany, Geheimrat von Opel, and Mrs. von Opel had expressed a desire in this agreement that Fritz von Opel keep it in his name; but he was not under any obligation to do that, although he could have done it if he had received, for instance, some protection by General Motors on the exchange basis.

Q. Is it not the fact that this clause about male line of descent was merely put in to deceive the German authorities? A. I did nothing to deceive anybody.

Q. You understood when you drafted this on October 5, did you, that in order to create a usufruct you had
1200 to have first the agreement to create a usufruct, and second, delivery of possession to the usufructuary. A. Right.

Q. Is it not the fact that it was contemplated that delivery of the subject matter, or res, would be made to the usufructuary by placing the proceeds of the sale of the Opel stock in a holding company, and delivering the shares of the holding company to an agent of Wilhelm von Opel? A. I don't recollect that in detail. There was a talk of a holding company, and I was not so much concerned about the carrying out later on; as I stated before in that moment, in making the agreement I considered the detail of how this usufruct was going to be handled secondary nature. It was something that between father and son could be arranged at any time when the question came up. The main thing was to create a right for Wilhelm von Opel to ask for the usufruct whenever he felt like it.

Q. Was it not also agreed that the usufruct would in fact be completed through the holding company, as I have described? A. If that is in the agreement, then it was agreed, and if it wasn't, it wasn't agreed. Maybe there was some talk about it, and there was definitely talk about it, but I kind of pushed that aside as something that could be decided later that didn't concern us at this moment.

1201 Q. And it was also agreed, was it not, that if the Opel shares were to be sold, the usufruct would follow into the proceeds? A. I didn't get the last few words. The usufruct would what?

Q. Would follow and attach to the proceeds. A. Once the usufruct is properly established, then it does follow.

Q. You filed an affidavit, did you not, with the United States Treasury in 1935, in connection with the gold case? A. I did not file it.

Q. You executed an affidavit, did you not, understanding that it was to be filed with the Treasury? A. Yes. I didn't even know exactly where it was going.

Q. I show you page 31 of Defendant's Exhibit 8, and ask you if that is a part of the affidavit which you executed. A. It looks like it, in looking at it.

Q. I invite your attention to the following words:

"In September and October, 1931, I advised Dr. Wilhelm von Opel and his son Fritz von Opel in the preparation and execution of a deed of gift from the former to the latter, of which a copy is attached to the affidavit of Mr. Fritz von Opel herein marked Exhibit R. I participated in the conversations which led up to the execution of these documents. In these conversations it was
1202 stated by Dr. Wilhelm von Opel and Mr. Fritz von Opel that securities covered in the deed of gift or the proceeds of these securities should be transferred to a corporation for the purpose of protecting the interests therein created by the deed of gift."

Let me ask you now, was that statement true? A. If I made this statement, and if there is an affidavit with my signature there on that date, I probably had a better recollection after three years than I now have after 17 years.

Q. Have you any doubt that this is your affidavit? A. I would like to see the original with my signature, and then I could say definitely. I haven't read the whole thing. You present it to me and say it is.

Q. You will agree that this either is your affidavit or it is a fraudulent copy of your affidavit? A. That is correct, that is what it would be, then.

Q. Are you aware that this record which you hold in your hand was filed in the United States Circuit Court of Appeals by the Plaintiff corporation? A. No, I don't, but it says so.

Mr. Burling: I take it counsel will concede that this is not a perjury or manufactured affidavit.

The Witness: I don't speak it to be, I will tell you that, but you ask me something that I haven't read in detail.

1203 By Mr. Burling:

Q. So that on the assumption that this is in fact your affidavit, you believe that you more accurately recalled in '35 than you do now in '48? A. Correct.

Q. Do you now think, on the basis of this, that it was stated by Wilhelm and Fritz von Opel that the securities given or the proceeds should be put in a corporation for the purpose or protecting the interests created by the deed of gift? A. I would say it would be in the way that I stated it there. But I don't remember that now, that that was exactly the case. All I remember now is that there was a lot of talk about a holding corporation.

Q. But you intended when you executed this affidavit to tell the truth in it, did you not? A. I always do, sir.

Q. I go on reading:

"The clauses in the deed of gift relative to the usufruct reserved to the parents of Fritz von Opel were particularly insisted on by Dr. Wilhelm von Opel, who said that he attached the greatest importance to this restriction on and reservation from the gift."

Is that correct? A. Well, I know definitely that Wilhelm von Opel wanted the usufruct for the reasons that I stated before.

1204 Q. He insisted on them? A. That's why it was put in—everything that was in that agreement was insisted on by somebody, and it was Wilhelm von Opel in this case who was getting the usufruct, so that I would say now yes, that is what he wanted, he wanted to have the right to create this usufruct.

Q. You go on to say, do you not:

"In German law the right of usufruct (niessbrauch) was and is recognized to be a separate estate in the thing and to be a real right or right in rem (dingliches recht) in the thing. By virtue of this concept of German law and the deed of gift itself Dr. Wilhelm von Opel and his wife retained an independent property right in the securities described in the deed of gifts and in any and all proceeds thereof, which independent property right gave the parents certain definite rights and powers under German law with reference to said securities and their proceeds."

Was that correct? A. If you read the whole thing, this is correct when you take the whole page here. I think it is not sufficiently clearly expressed. It gave them an independent right to a property, a right, and the securities would have been better.

Q. But that is not what you said. A. But it does follow from what is said in the whole thing, I would
1205 say, if you read the whole page.

Q. You read any part you think makes the point you suggest. A. "The rights and powers thus reserved to the parents by virtue of their usufruct include the right to be consulted with reference to and to prevent the sales of securities or their proceeds by Mr. Fritz von Opel; the right to have provisions for the safeguard of their usufruct . . ." and so on ". . . inserted in any agreement of pledge Mr. Fritz von Opel might make with reference to the securities or their proceeds and the right in general to invoke the jurisdiction of the courts on the question whether or not any funds, proceeds of said securities, are invested in a manner to safeguard the right of usufruct and carry out in a reasonable manner the intention of the parties as expressed in their agreement creating the same.

"In addition, by virtue of this right of usufruct the parents can at *any* time have the securities or their proceeds put under the joint control of themselves. By virtue

of this right of usufruct, the parents can at any time have their securities or their proceeds put under the"—which inferred that they did not, had not done it by that time, and just had a right to do all those things.

Q. Was it your opinion on June 6, 1935, that
1206 Wilhelm and Martha von Opel did have a usufruct, or was it your opinion that they did not have a usufruct? A. From this year I would say that it was my impression that the agreement that was concluded had been carried out, and it had been really created.

Q. In fact, you so swore, did you not? Don't you say that in your affidavit? A. That wasn't my impression. I don't say it had been carried out, no.

Q. You do not? A. I don't think I said that, no. I am sure I didn't say it. And the whole thing, I think, it leaves it wide open as to—because it says they had a right of, by virtue of this right of usufruct, can at any time have the securities, but under their joint control, but it would be my opinion when that hadn't been done, the usufruct was not yet established, and that follows from this, that's in here.

Q. You go on to state, do you not, the "right of usufruct was derived by German law from the Roman law." A. I see.

Q. ". . . and is governed by the following among other provisions of the German Civil Code, drafted in 1896 and promulgated in 1900, which is still the law of Germany." And then you set out portions of the code, do you not? A. That is right.

1207 Q. And then at folio 101 you say:

"I am informed that with part of the proceeds of the securities described the deed of gift Exhibit R Mr. Fritz von Opel purchased shares of a Swiss Corporation, Uebersee Finanz-Korporation A. G. If this be the fact, I am of opinion that under German law the above-described rights and obligations based on the reserved usufruct would attach to the Uebersee Finanz-Korporation shares

in the same manner as if these shares had been described in the deed of gift itself."

Isn't that a clear, unequivocal, and flat statement that provided that the proceeds of the Opel shares went into Uebersee, you believe that the parents Opel have a present usufructuary right in the Uebersee Finanz-Korporation shares? A. If the agreement had been carried out as I thought it had been.

Q. But you don't say anything about if it had been carried out. A. I say, if this be the fact, what you are just talking, speaking about now is, I am informed that the proceeds were, and then I say if this be the fact, I am of the opinion that under German law the above-described rights and obligations would have followed.

Q. But the only condition which you leave open as to if this is the fact is whether the proceeds had been
1208 placed in Uebersee. A. Right.

Q. You don't say a word, do you, about "and if delivery has been made to the parents?" A. Well, I was under the impression that that had happened.

Q. You regard yourself as a careful man, do you not? A. I certainly do.

Q. And you have spent many years in the practice of law, have you not? A. That's correct.

Q. And you know what an affidavit is, do you not? A. I think I do.

Q. Do you swear that something is a fact merely because you have an impression that it is a fact? A. Well, at that time I was under that—was really convinced that that was the situation.

Q. And that was because you were told that fact, is it not? A. I would not know at this moment how else I could have known it.

Q. You would not have sworn that the parents Opel had the usufruct unless you had been told they had the usufruct, would you? A. I didn't swear they had it.

1209 Q. You swore they had it if the proceeds had been— A. If it had been carried out.

Q. No, that is not what you swore, is it? A. Yes, sir. Well, that follows from this, that that is what I swore, I would say. Well, that's definitely what I meant to say, because that is the law.

Q. Would it be fair, Mr. Stansfield, to judge your standards of candor and accuracy by saying that we could examine—the Court could read this affidavit, and then determine whether a fair reading of this affidavit is that the usufruct was in the parents? A. Personally, I don't think that I was asked to make an affidavit that the usufruct was in the parents, but to give a legal statement of what the consequences of a usufruct would be if they were.

Q. I wasn't asking you what you were asked to do. Won't you admit that, particularly, an American Government official could reasonably be expected to read from this statement that the usufruct had been created by delivery of the shares of Uebersee to his father's agent? A. I don't at this time recollect that, Mr. Burling, but I say that from reading my own affidavit, I must have been under the impression that it had been carried out, my first agreement had been carried out. I didn't think that was a question of doubt at that time.

1210 Q. When did you arrive in Washington? A. Yesterday afternoon.

Mr. Burling: That is all I have.

Examination by Plaintiff

By Mr. Ingoldsby:

Q. Mr. Stansfield, I wish to ask you a question concerning a statement which is contained in what is entitled "A preliminary statement of the Defendant's memorandum in support of a request that Manfred Stansfield be called as a witness of the Court." I am reading from page 4. The statement reads as follows:

"Within a week prior to the commencement of the trial of this case, counsel for the defendant have received a signed statement of a person residing in Germany, which statement was obtained by defendant's investigators in Germany. This statement reads in part as follows:" —and this is quoted from the statement—

"'I remember quite definitely that one day before 1933 Wilhelm von Opel told me, "I cannot trust anybody. Wronker-Flatow has prepared a somewhat crooked contract for us, and now he is blackmailing me. The scoundrel has received 50,000 reichsmarks as a loan and now he does not want to pay them back but wants them as a gift, and I can't do a thing, otherwise I will be in a fix."'"

That is the end of the quote. I wish to further
1211 advise you that the day after this memorandum was filed with the Court we were advised pursuant to the instructions given by the Court that that statement from which I have just read was attributed to one Erich Deku. I ask you if you know Mr. Deku, or if you know anything about that statement? A. Well, the first thing, whether I knew Mr. Deku, I met him, I believe, once for about a half a minute when Geheimrat von Opel passed through the hotel lounge and said, "I would like you to shake hands with Mr. Deku." I couldn't say for certain that the first name was the right name, but I remember the name Deku.

Q. Now will you answer the second part of the question with reference to whether or not you have any knowledge of such a statement. A. This statement for me is so outrageous that I feel a little bit embarrassed that I have to answer such a question. I never drew any crooked agreement for anybody, and certainly not for Wilhelm von Opel. I never asked Wilhelm von Opel to make me a gift. Whenever I discussed the loan at the later date with Wilhelm von Opel, I told him if he had to sue me because the Nazis would make him sue me, I would set

off my services against it. And I never at any time gave any basis for such a statement by Wilhelm von Opel.

Q. Mr. Stansfield, the statement which I have just read to you is alleged to have been made, and I quote, "One day before 1933." I wish to ask you what were your relations, what was the status of your relations?

1212

The Court: Do you consider this in evidence?

Mr. Ingoldsby: The statement?

The Court: This memorandum.

Mr. Ingoldsby: No, I do not.

The Court: Has Mr. Deku testified to it?

Mr. Ingoldsby: No, he has not, Your Honor.

The Court: Why do we rebut it then? Are we not just taking up time?

Mr. Ingoldsby: Possibly. I simply wanted to set aside any inference.

The Court: I don't draw inferences from memoranda sent to me by counsel, unless they are in evidence under oath here. I don't want to open up a long line of testimony here as to which there is absolutely none at the moment.

Mr. Ingoldsby: Very well, I will withdraw any further questions on that.

By Mr. Ingoldsby:

Q. Mr. Stansfield, you testified in your cross examination concerning the unique position which you occupied with General Motors and the Opel brothers at the time of the 1929 negotiations. I wish to ask you to state who in General Motors was familiar with your somewhat dual capacity. A. Definitely John Thomas Smith; I believe I could say everybody who had directly to deal with these, with the negotiations and everything concerned; also, in the Opel family, everybody knew that I was acting in that double capacity.

1213

Q. Who would you say in General Motors was concerned with this transaction other than John Thomas Smith? A.

Are we talking now about the first transaction? Or are we talking about this deal here about the stock, the gift?

Q. I am talking about the first transaction—I believe the year is 1929 when General Motors and the Opel works were conducting negotiations for the over-all purchase of the Opel works. A. Well, my contact on all legal matters was with John Thomas Smith.

Q. Did you have anything to do with Mr. Alfred P. Sloan at that time? A. Yes, he was in the negotiations, himself, and I met him off and on.

Q. Was he aware of what you were doing? A. In what I was doing in general he was fully aware?

Q. I will ask you if there was any reason for keeping the negotiations between the General Motors and the Opel works secret in 1929. A. From September or October, 1928, to about March, 1929, it was very definitely in the interest of the Opel brothers to keep it
1214 secret, because it was a possibility that General Motors did not accept the option, and it would have hurt the standing of the Opel brothers, of the Opel firm if it had been known that General Motors had negotiated to take over the Opel firm but turned it down after investigation.

Q. Were efforts made therefore to keep the entire negotiations secret? A. They went very far. I mean they went so far that on the day that I drafted the agreement for the option I wrote that whole agreement both in English and in German by hand, and the German part was dictated by Rechtsanwalt Hachenburg to my wife, who is not a typewriter, but helped out—does a very poor job on that. And the English was written by the managing director of the General Motors Gmbh, so that no outsider would hear anything about it. And it happened that during the full six months nobody knew anything about this agreement, it never came up.

Q. I wish to direct your attention to the period of time around October 5, 1931, at the time the gift agreement was

signed. I will ask you if any efforts were made, either by you or by any of the von Opels, to keep that agreement secret. A. It was very important to keep that agreement secret if we didn't want to defeat the purpose. There was a large amount involved, and the consequence, the effect
of a large agreement like that on the lawmakers
1215 might have had quite some influence on the new laws, and it might have been made retroactive if it had come out prematurely.

Q. Did you personally fear that possibility? A. I was just as much—I don't get the English word—I mean aware of that at that moment as everybody else was. It was very much in our mind. In fact, it was one of the reasons why no notary public was called in.

Q. Are you able to state at this time, Mr. Stansfield, what the general feeling was among the German people in 1929 when it first became known that negotiations for the sale of the Opel plant had been concluded? A. There was very much resentment, and that resentment was naturally stirred up by competition, and trying to say that this was now a foreign corporation, and people should buy German cars, and so on, so that we had an uphill fight to overcome that. And one of the statements that we made there to the public, which was true at that time, that there was at least as much German capital in the firm as there was in other automobile plants, and in addition we could state that all the material was manufactured in Germany, that German labor and everything helped, so we had a lot of sentiment there which was always stirred up again by competition. We had to keep that always in our mind.

Q. Did this situation enter into your considerations
regarding secrecy at the time that the gift agree-
1216 ment was made in 1931? A. We were all the time very much aware of that situation, because it always flared up again.

Q. I would like to ask you, Mr. Stansfield, concerning your testimony regarding statements made to Mr. Kiefer or other FBI agents. First of all I would like to ask you, how many times have you been interviewed by the FBI in connection with this case? A. I would not like to be pinned down, but already while Mr. Von Opel was—during the war.

Q. Interned? A. Was interned FBI men came to talk about this, and I talked about it half a dozen times. But I wouldn't like to give the exact number. It could be five times. It impressed me as being rather often repeating the same things.

Q. On how many occasions has Mr. Kiefer come to see you? A. If I am correct, I think I saw Mr. Kiefer twice. It could be three times, but I once saw him at the offices. But at least twice that I know for certain.

Q. And did he come to your office, or did you go to his office? A. I know for certain that once he came to my house, not to the office, and once on arrangement over the phone I came to his office, downtown office.

1217 Q. Do you recall the last time that you talked to Mr. Kiefer? A. The last time I talked to him very shortly, it was only a few minutes, and I think it was practically to the effect, as he now was talking directly about the loan, that I said that I did not want to discuss the loan, I had so many things to set off against the loan, but I didn't feel that—

Q. May I interrupt you there, when you are speaking of the loan, are you talking about the first occasion or the second occasion when you spoke to Mr. Kiefer? A. I think on the second occasion that was when he mentioned that.

Q. And where did that conversation take place? A. In my home.

Q. In your office? A. In my home.

Q. And was Mr. Kiefer alone or was someone else with him? A. I think there was somebody else with him.

Q. And did you see Mr. Kiefer or the other agent who was with him make any notes on the conversation? A. No, I did not. I always wondered about that, why they don't take notes, and why they don't afterwards present it to the party at some date to confirm that that is what they have said.

Q. I want to direct your attention to the first occasion when you discussed this matter with Mr. Kiefer.
1218 First, are you able to tell us approximately when that was? A. Quite some time ago. I would have a hard time of fixing it at this moment.

Q. Could you give us the approximate year? A. I think it was last year.

Q. Last year? A. Not 1948, but 1947. It could have been even—well, the date must be there, it could have been earlier.

Q. 1947 or earlier? A. That's correct, that is my recollection.

The Court: Are you going to be some little time further?

Mr. Ingoldsby: No, Your Honor, about five minutes.

The Court: Are you going to question after that?

Mr. Burling: Nothing has come up yet, Your Honor.

The Court: All right. Go ahead, then, see if you can get through.

By Mr. Ingoldsby:

Q. I want to ask you if you ever had any conversation with any agent of the FBI, Mr. Kiefer or otherwise, regarding the Government's possible assertion of a claim for $20,000 against you as successor in the interest of the property of Wilhelm von Opel. A. I didn't get the last part of that.

Mr. Ingoldsby (To the Reporter): Will you read it.

(Accordingly, the pending question was read by the reporter.)

1219 The Witness: I don't recollect that that was stated that way. It was always when we talked about whether I owed Wilhelm von Opel a certain amount.

By Mr. Ingoldsby:

Q. I am going to ask you to state very briefly, Mr. Stansfield, the conditions under which the matter of the $20,000 loan from Wilhelm von Opel to you first arose. A. After I had acted for Wilhelm von Opel and the brother, Fritz Opel, in the whole negotiations and after the negotiations, the brothers felt I had saved them a lot of money, and on account of their confidence in me they had not called in other lawyers to create additional expenses. So they felt they wanted to pay me at that time.

And I told them at that time that I did not want any payment because—I had two reasons why I didn't want them to pay me at that time. One was that I wanted to keep my independence, and the other was that most of it would have been taken away from me in taxes, because I was making a lot of money at that time.

On the other hand, I had some need for some capital, because I was moving my house over, I had a little while ago I had a very extensive payments in connection with my divorce, which was over twenty years back but at that time it was quite fresh, and I had other personal matters that I wanted to settle.

In addition, I wanted to buy an interest that was
1220 offered to me from General Motors in the Management Securities Corporation, for which I had to invest a certain capital. It was over $10,000.

So I told Geheimrat, although I would not at this moment accept any payment for the reasons stated, I would be, I would accept a loan of $20,000. I said we could leave the question of payment for any services rendered open during the years, how we were going to handle that, but very definitely I wanted it set up as a loan at that

time, because otherwise I would have been involved in taxes, and so on.

For that reason I wanted to keep that open. In fact, it was my intention to be in a situation, and that was also the understanding, that I could pay it back any time I wanted to.

The Management Securities, my participation in there, would have brought me in 1936, if I hadn't left Germany, and if the Hitler situation hadn't arrived, well over a hundred thousand dollars in stock of General Motors. That was the minimum, but it might have been twice, the double amount, so that the payment would have been very easy for me.

But all conditions changed afterwards, so we went back to that, that I said, now, you could not expect me to do all these things for nothing, and although I like to pay it back, I am afraid under the circumstances it will be very hard for me, and he said, as I have stated, it is a loan, and we will have to keep it that way.

1221 I said, "You can keep it that way."

He said, "I'm not going to ask you for payment of the loan, except I am forced by the Nazis, or conditions"—we were talking them about the Nazis—"to sue you."

I said, "Well, in that case, I am going to set off against all the services I have rendered to you."

Does that answer you?

Q. Was that conclusion which you have just stated agreeable? A. Very definitely. I don't think he ever intended to ask for it, and I don't think he ever after things had changed the way they had changed, expected value of the loan at any amount to himself.

Mr. Ingoldsby: I have no further questions.

The Court: You are excused, Mr. Stansfield.

(Witness excused.)

The Court: Let me speak to you gentlemen at the bench.

(Accordingly, counsel approached the bench, following which the noon recess was taken, from 12:40 p.m. until 2:00 p.m.)

1222 AFTERNOON SESSION

(The trial was resumed at 2 o'clock p.m. at the expiration of the luncheon recess.)

Thereupon, HANS FRANKENBERG was called as a witness and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gallagher:

Q. Will you please state your name? A. Hans Frankenberg.

Q. Where do you reside, Dr. Frankenberg? A. I reside in New York at the Ritz Carleton Hotel.

Q. And of what country are you a citizen? A. I am a citizen of this country.

Q. Of the United States? A. Yes.

Q. Doctor, it has been stated by counsel for the plaintiff that you had planned to make a trip to Europe on the 16th of this month; is that correct? A. That is correct.

Q. And it has been further stated that your plans were postponed until Saturday, which is the 18th, I believe. Is that correct. A. That is correct. They were post-
1223 poned because I was waiting for a business associate who was late in his return from Europe.

Q. Doctor, did you have any conversation with counsel for the plaintiff, Mr. Ingoldsby, Mr. Boland, and myself, last week with respect to your information about this matter? A. I did.

Q. And would you state what the conclusion was at that time as to whether or not you would appear as a witness?

Mr. Burling: I object. The witness should not testify as to what my friends concluded, if they wished him to testify.

Mr. Gallagher: All right; strike the question.

By Mr. Gallagher:

Q. As the result of that conversation, will you state what you did? A. I went to New York again and had a reservation for Saturday morning.

Q. Did you receive a phone call from me on Friday? A. I did.

Q. And is it not a fact that I advised you certain statements had been made, questions put to Mr. von Opel, on Friday afternoon, and as the result thereof I desired you to plan to appear as a witness? A. That is correct.

Q. What is your present occupation, Dr. Frankenberg?

A. I am a banker.

1224 Q. Can you state with what bank you are associated? A. I am associated in New York with the firm of Arnold & Bleichroeder, a firm in Switzerland connected with the firm of Adler & Company.

Q. For how many years have you been in the banking business, Doctor? A. I was in the banking business, oh, for prior to the outbreak of World War I.

Q. You have been associated with banks since that time? A. Oh, no. At that time I was, I used to be a banker in Frankfort.

Q. Subsequently you were associated with Adler & Company; is that correct? A. The firm in Frankfort was liquidated in '30, and I then joined these friends of mine, who at that time took an interest in the firm of Adler & Company, Zurich.

Q. Have you been associated with the Uebersee Corporation in any capacity? A. Yes.

Q. In what capacity, Doctor? A. I was and I still am a director of this.

Q. Now, is the Uebersee Finanz-Korporation the only client of the bank with which you are associated? A. Of course not.

Q. There are many clients besides Uebersee, Doctor?

A. Yes. I would say, it was a very valuable client
1225 of ours, but it took a small part of my time, as I was busy in many other fields.

Q. Are you familiar with the books and records of the Uebersee Corporation? A. Well, I am not too familiar with it. The bookkeeping was done by Mr. Gong. Of course, I received the balance sheets to be approved.

Q. What was in general the nature of the work that you did for Uebersee? A. I was in general the financial adviser of Uebersee.

Q. Can you state whether or not Uebersee followed standard investment and management practices? A. No, at least, not from a banker's viewpoint.

Uebersee, according to the wishes of Mr. Fritz von Opel always engaged in, to a very great extent, in industrial propositions, which I didn't consider to be very liquid.

Q. Now, let me ask you, Dr. Frankenberg: Did you ever direct Mr. Fritz von Opel as to how he was to act in his investments? A. I could not even have done so because if I wanted to—

Mr. Ingoldsby (interposing): A little louder, please.

A. (Continued) Mr. Fritz von Opel handled the investment business quite on his own. I had no interest.

Of course, he told me after he made investments,
1226 what it was about, and I had no, practically no say in this matter.

Q. Did Mr. Wilhelm von Opel ever ask you to be his agent or representative? A. No, he never did.

Q. Did you ever serve as Wilhelm von Opel's agent, as a matter of fact? A. I never did.

Q. Did Wilhelm von Opel ever give you any direction as to what you were to do in your capacity as director for Uebersee Corporation? A. Most certainly not.

Q. Now, where were you during the war years, Dr. Frankenberg? A. During the war? I came to this country in May, 1940.

Q. Did you remain here after that and during the war? A. Yes, until after the war, except for two trips I made I made to Colombia, South America.

Q. And you were not back in Europe after? A. No.

Q. To your knowledge, did the Uebersee Finanz-Korporation do any business with any enemy or ally of an enemy during the war? A. I don't think so.

1227 Q. Are you acquainted with H. Mason Houghland? A. I met Mr. Houghland once, or maybe twice, but only for a very short time.

Q. Are you acquainted with Mr. B. F. Crittenden? A. I met Mr. Crittenden. I went down to Louisiana in the year 1937, together with Fritz von Opel, and at that time I met him there.

Q. Now, on Friday last, Dr. Frankenberg, Mr. Burling asked Mr. von Opel several questions and received several replies.

The questions were with respect to certain purported conversations in which you had participated. I am going to read from the record and ask you if you will state or give your comment thereon.

At page 1032 of the record, Mr. Burling, in speaking about Mr. Crittenden, asked Mr. von Opel the following question and elicited the following answer:

"Question: Did you ever spend two weeks in Zurich with Crittenden, in the same hotel?—and I will identify the hotel as the Baur au Lac?

"Answer: I think the Crittenden family traveled through Switzerland, and it is possible I met them in their traveling.

"Question: You spent two weeks in a series of business discussions with Crittenden in Zurich, did you not,
1228. at the offices of Hans Frankenberg?

"Answer: No."

Now, I will ask you at this point: Did you spend two weeks in business discussions with Mr. Crittenden in Zurich in the year 1938 or '37, Dr. Frankenberg? A. I remember that Mr. Crittenden with his wife and also, I think, it was Mr. Bayer, went on a visit to Switzerland.

Maybe it was '37, I could not tell you, but most certainly I didn't carry on business negotiations with Mr. Crittenden. There was no reason to do so. That is all.

Q. I will now read from page 1051 of the record. Mr. Burling was talking about a merger of some oil companies, and in the course of the questioning, he asked the following questions and elicited the following answers, and this is directed to Mr. Fritz von Opel:

"Question: Did you and Frankenberg not decide to call a conference in Zurich on this subject, and did you not decide to call Crittenden over to Zurich to discuss this?

"Answer: There was no need."

I will ask you, Dr. Frankenberg, did you and Mr. von Opel decide that there should be a conference on this subject in Zurich, and as a result call Mr. Crittenden to Zurich? A. I could not imagine it should have happened because there was no reason I could remember
1229 Q. Then at page 1053, discussing the same topic, Mr. Burling asked the following question of Mr. von Opel:

"Question: Is it not a fact that the discussions of merger went on in Zurich for about two weeks?

"Answer: That sounds rather fantastic to me, Mr. Burling, because if I wanted to merge, all I would have to do is to give the orders."

I will ask you, Dr. Frankenberg, again: Were there discussions of a merger with Crittenden which went on in

Zurich for about two weeks? A. Really, I don't even get the idea of the statement because there were several oil companies down in Louisiana, all of the stock owned by Uebersee Finanz Korporation.

Now, why should we discuss a merger of those companies in Zurich. Such merger could only be found of any interest from an American tax viewpoint.

Really, I could not see anything in it.

Q. Now, at page 1054, in the discussion of the same subject, Mr. Burling asked this question:

"Question: During these discussions was it not said that a million dollars additional capital should be put into the merged companies?

"Answer: That was what Mr. Crittenden wanted. He was quite a great spender in refining.

"Question: Didn't you and Frankenberg say that 1230 you thought that you would do that?"

Did you make any such statement to Mr. Crittenden, Dr. Frankenberg? A. I would be in favor of that.

Q. Yes? A. I really know—it was, in my opinion, it was already too much money invested anyway in this picture.

Q. On page 1057, Mr. Burling asked this question of Mr. von Opel:

"Question: Is it not a fact that Frankenberg told you that he, not you, had had a talk in the afternoon before this dinner, with Crittenden, and that he, Frankenberg, had told Crittenden to go ahead and consolidate the oil companies; is that not the fact?"

Did you make any such statement to Mr. Crittenden? A. It sounds to me more or less fantastic because I wasn't in charge of this.

Q. Your answer is that you didn't make any such statement? A. No; I could not possibly have.

Q. Now, going to page 1059, so that you will understand what was being discussed, Mr. Burling stated or questioned Mr. von Opel, and speaking of Mr. Houghland:

"Question: Did he confer with you and Frankenberg at the Plaza in the fall of '37?"

1231 And then the answer: "That is different, that is possible."

"Question: The fact is, is it not, in 1937 Houghland had a proposal to set up a series of small subsidiaries, to run smaller-sized gasoline stations?"

That was the topic, and we go to page 1060, and at page 1060, here is the question and answer at that point:

"Question: Is it not a fact that you met him at his hotel and walked with him to the Plaza Hotel, and while you, during the walk he outlined the proposal to you?

"Answer: That is probable.

"Question: And is it not the fact that when you reached the Plaza you talked to Dr. Frankenberg's room, and he came down, and you introduced Houghland to Frankenberg, and then the three of you went into the Palm Court and had a drink? "A. That is possible, if Dr. Frankenberg lived at this time in the Plaza, and we called for him there, that is possible.

"Question: And is it not a fact that before you had reached Frankenberg you told Houghland that he would have to make a full explanation of the proposal to Frankenberg?

"Answer: No, Mr. Burling.

"Question: The answer is no?

"Answer: No.

"Question: Is it not the fact that at the Plaza

1232 Houghland made a full explanation of his proposal, and Frankenberg said he would not accept it?"

Did you make any such statement to Mr. Houghland? A. As far as I can recall, Mr. Houghland never asked me about any sort of business proposition because he did that exclusively with Mr. von Opel.

Mr. Gallagher: That is all.

Mr. Burling: I wish to renew my application for at

least twenty-four hours in which to prepare proper cross examination.

The Court: I do not think I can give you that, Mr. Burling.

Mr. Burling: May I be heard on it?

I am not sure I made myself clear. Plaintiffs indicated by their answers to the interrogatories that they were not calling this witness. He was an obvious one and his name goes all the way through from '31 to date.

I did not prepare myself to cross examine, and we were then told he was sailing for Europe. My friends intended to surprise me, because they didn't call me on the telephone.

I worked on Saturday and Sunday on something which was coming up in January, 1949.

If I knew he was to be here, I could have prepared some notes.

The Court: I just let him testify on the Uebersee
1233 Korporation. You are thoroughly prepared in this case. I have tried to give you every courtesy I can.

Mr. Burling: Thank you, Your Honor.

Cross Examination

By Mr. Burling:

Q. Dr. Frankenberg, you stated you are a United States citizen? A. Yes, sir.

Q. Of what country were you a citizen before that? A. I am a born Austrian.

Q. Of what country were you a citizen before you became a United States citizen? A. I was a citizen of Haiti.

Q. What is your position with Arnold & Bleichroeder? A. The Arnold family are very old friends of mine, as a matter of fact, since about forty-five years or so, and in my youth.

Now, at the time they took the interest in the Swiss firm named Adler & Company, that was around '31. I joined them in this picture.

Q. In other words, the Arnold family controlled Adler & Company; is that right? A. That is correct.

Q. And they also controlled and represented an important part of Arnold & Bleichroeder; is that correct? A.
1234 That is right.

Q. And you have been with the Arnold interest then since 1931; is that correct? A. That is correct.

Q. What position did you hold in the firm here in New York? A. None. I just have my office there.

Q. Are you employed by anyone? A. No. I am to a very small extent a shareholder.

Q. Would it be fair to say that you represent financial interests of Arnold, that you act for them? A. Yes, I tried to do business for them, but I am not employed, and I have no say. At least, I am not an officer of the company. They ask for my advice and so on.

Q. From what do you receive compensation? What do you live on? A. Well, at the time I am doing some business of my own, and besides that, I get some from time to time—that was before the war—I lived on Adler.

Q. On Adler & Company? A. Yes.

Q. But since the war hasn't Arnold & Bleichroeder paid you anything? A. Not in the form of any salary.

Q. Well, in any way? A. Let me see. Just for a
1235 couple of years, they gave me a sort of bonus out of the income because I, in turn, gave them business.

Q. The Arnold interests, whether Adler & Company or Arnold & Bleichroeder, have made extensive advances to Fritz von Opel and his wife, have they not? A. The Arnold bank?

Q. Didn't the same Arnold financial interests, as a matter of fact, to your knowledge, advance money to Mr. and Mrs. Fritz von Opel since '43? A. No.

Q. Do you know whether it is or is not the fact that one of the members of the Arnold family personally advanced such money since 1943? A. No.

Q. You are socially well acquainted with Mr. Fritz von Opel, are you not? A. Yes, sir.

Q. And Mrs. von Opel was released from internment in 1943, was she not? A. '43 or '44; '43.

Q. And all of the assets of Uebersee Finanz Korporation were invested in '42, were they not?

Do you know what money Mrs. von Opel has been using to live on since '43?

1236 Mr. Gallagher: We object.

The Court: If it is related to him, it may be admissible.

I will permit it, if he can trace it back to him, any interest he has in it.

The Witness: May I answer this question?

I know.

By Mr. Burling:

Q. Yes. Recite what you know about it. A. I personally advanced some money to Mrs. von Opel.

Q. And he was released in May of 1945, and do you know what money he has been using to live on since then? A. Not entirely, but I advanced certain amounts of money to Mrs. Von Opel, and I assume she, in turn, gave part of it, at least, to her husband.

Q. Now, you know that Mr. Gallagher's partner, Mr. Conner, and Dr. Heinrich Kronstein, made a trip to Europe in connection with this case in '47?

Did you advance the expenses of that trip? A. No, but I presume Mrs. von Opel did.

Q. What is the total that you have advanced to Mrs. von Opel? A. I think it is about $25,000.

Q. You know, do you not, that neither Fritz von Opel nor Mrs. Fritz von Opel have any assets outside of Ger-
1237 many, other than this claim they may have in this case?

Mr. Gallagher: We object to any inquiry as to what assets Mr. von Opel may have. I don't see the relevancy.

The Court: No.

Mr. Burling: The witness, I assume, has a $25,000 interest in the outcome of this suit.

He has no chance of being repaid unless the plaintiffs prevail.

The court: You mean, he did not have any other means to pay him; is that it?

Mr. Burling: If they don't win, he will not get back his money.

The Court: I will let you go into that.

The Witness: What is the question?

By Mr. Burling:

Q. You understand that neither Fritz von Opel nor his wife have any assets outside of Germany, other than whatever claim they may have in this instant lawsuit? A. Well, after all, he has a very valuable house in St. Moritz, and they may have some others. I don't know.

Q. You testified about your knowledge of the books and records of the plaintiff corporation, did you not? A. Yes.

Q. And you yourself made a selection of documents from these books and records for use in this very trial; did you not? A. I made a selection of the books?

1238

Q. Yes. A. As far as I understand, all the books were produced for evidence here, and I was instrumental in having done it because I was requested.

Q 'But at an earlier date, didn't you go through the books and pick out special papers and send them to plaintiffs' counsel? A. Yes; that may be the case. If you show me the evidence you are talking about, I will be glad to testify about that and answer the question.

Q. Will you speak louder? A. I am very sorry. I have a bad throat condition.

Q. What did you say? A. If I know to which files or books you refer, I could answer this question more preciely.

Q. Well, do you recall that you went over the books and

selected some to be sent to plaintiffs' counsel over here? A. No, that wasn't this way. At the request at that time of Mr. Conner, we went over all the books, including the year 1936, I think, and I didn't pick them out.

Q. In the middle of August, '47, did you or did you not bring over some books and records? A. I really

1239 would not remember.

Mr. Burling: Now, at this time I request to produce from the books and records a white sheet contained in the file called City Bank & Trust Company, a white sheet which recites on its face that Dr. Frankenberg has selected certain documents.

May I have that, please?

Mr. Gallagher: I don't know if we have it. If there is any great moment about what you are trying to establish, I just have a vague recollection about it. Of course, I wasn't in the case at that time, but I think possibly Dr. Frankenberg did have the files and books from '31 to '36 pulled, and we came in with them. It was Mr. Conner who got in touch with him or Gang.

The Court: Did you find the white sheet?

Mr. Burling: It has been removed. It was in this file. If I don't have it, I will have to call Mr. Laufer to testify.

Mr. Gallagher: Where was it? In this file?

Mr. Laufer: Yes.

Mr. Gallagher: It still might be. I will look for it.

Mr. Burling: For the record, I am referring to the file named Uebersee Finanz Korporation, A. G. and having this title, City Bank & Farmers Trust Company.

By Mr. Burling:

Q. Now, in addition to being a director, were you

1240 not also managing director of the plaintiff corporation? A. Well, you may put it this way, if you want to: That refers only to technical matters and

financial matters. The policy, investment policy, was made by Mr. Fritz von Opel.

Q. I want to read to you from an affidavit of Mr. Fritz von Opel, and I am reading from page 52 of the Gold case record:

"In April, 1931, when I was employed in Antwerp as aforesaid, I learned through Dr. Frankenberg, an old acquaintance of my father's, then employed in Zurich as general manager of a banking corporation known as Adler & Company, A. G., that the owners of the stock of Uebersee Finanz Korporation, A. G., would be willing to sell it to me."

Were you an old friend of Wilhelm von Opel in '31 or an old acquaintance? A. An acquaintance; yes.

Q. I want to read from another portion, reading at folio 165, and this is Fritz von Opel speaking now:

"I said to him, and he agreed, that, if the option were exercised on the stock of Uebersee Finanz Korporation, A. G., it might not be necessary to form a new corporation, but that the Uebersee Finanz Korporation, A. G., might serve as the holding company originally contemplated between us. My father asked me to be sure that the details were so arranged as to protect his and the other interests in the proceeds of the deed of gift,
1241 Exhibit R, and suggested that Dr. Frankenberg should become managing director of the holding company. The option having been exercised in the manner above described, I went to Zurich and obtained from Uebersee Finanz Korporation, A. G.,—"

Mr. Gallagher (Interposing): May I interrupt to let him have a copy of it so that he can follow?

Mr. Burling: Yes.

By Mr. Burling:

Q. I stopped at the words Uebersee Finanz Korporation, A. G.

"Under date of January 13, 1932, a power of attorney authorizing me to sign for the corporation, employing the form furnished me as above stated by Mr. Sammis. A true copy of this power of attorney is hereto attached marked Exhibit U. At the same time I had a conference with Dr. Frankenberg, in which I asked him if he would be willing to serve as a member of the board and managing director of Uebersee Finanz Korporation, A. G. He stated that he would do so."

Now, skipping to folio 174, page 58, at the bottom of the page:

"I also frequently consulted with Dr. Frankenberg as managing director of the corporation regarding its investments, especially the corporation's investment in the stock
1242 of Spur Distributing Company, Inc., amounting to $440,871.44."

Will you now look at page 61, folio 183.

"In these corporations, Uebersee during 1933 invested an aggregate of $756,000. Dr. Frankenberg and I intended on behalf of Uebersee, greatly to increase its investments in these oil companies," and so on.

Now, did you see Fritz von Opel's affidavit in 1935? A. No; I saw it only much later.

Q. Is his recital of his dealings with you a correct one? A. Well, of course, he told me about it, as I stated before, about the investments he made.

As a matter of fact, the Spur stock was acquired two years before, and perhaps in 1933, something like that.

Also, these first oil properties had been acquired at that time by Mr. Fritz von Opel, and due to his presence in the United States, he discovered this very different financial situation, in a number of these companies, which were partly, especially in the later years, not very satisfactory.

The Spur proved to be different, a very good one.

Q. All I asked was: In your opinion, Dr. Frankenberg, are these portions of Mr. von Opel's affidavit, which I read

to you, a correct statement of your relation to him and to Uebersee? A. Maybe Mr. von Opel could it that it has been this way. He is a very temperamental man, and
1243 so maybe, so he made these investments primarily without consulting me, but later on reported to me about it, asking my opinion.

Q. Well, did he ask you to become general manager and did you agree to do so? A. I did.

Q. And you did become general manager; is that right? A. Only in charge of technical and financial matters.

Q. What other matters was Uebersee involved in, besides technical and financial matters? A. In investments.

Q. Investments are not financial; is that your statement? A. I refer to the word "financial." The way I meant it was in loans, financing the company, and so forth.

Q. Will you look at folio 186, please?

Look first at 185, and I am reading from Fritz von Opel's affidavit again:

"I returned to Switzerland in December, 1932. I went to Zurich and discussed with Dr. Frankenberg, as managing director of Uebersee Finanz Korporation, A. G., the investments which I had made and was contemplating for the corporation, and he approved of them."

Is that correct? A. He just said he made the investments.

Q. And you approved of them? A. Of course, I
1244 approved of the.

Q. Will you also further down the page, halfway through folio 186, look at:

"I discussed the situation with Dr. Frankenberg both by telephone and face to face, and was told by him to convert the cash holdings of the corporation into gold or foreign exchange."

Did you give Fritz von Opel instructions to convert cash into gold or foreign exchange? A. I didn't give him instructions, but I remember in this case that I was in favor of him investing this money, either in foreign exchange on

the Swiss standard, or maybe in gold because two years ago the pound sterling was devalued, and in due course the dollar was devalued, and later on the Swiss franc was devalued.

So at that time I was of the opinion that the devaluation of the dollar was imminent.

Q. Well, the question is: Did you tell Fritz von Opel to convert dollars into gold? A. I could not say whether I told him so.

Q. Is it fair to say you told him to do so? A. Maybe I gave him this advice.

Q. What is the organization called, I believe in Portuguese, Sociedad Monte Franco? A. It is a Brazil 1245 corporation.

Q. Will you state what you know about it? A. It is owned by two brothers of the Arnold family living in Brazil.

Q. Was it not organized by you? A. No.

Q. Will you agree that your name is translated literally—

Mr. Gallagher (Interposing): We cannot see what the Brazilian corporation has to do with the situation. It has no bearing to Uebersee.

Mr. Burling: I will state what I expect to prove, if it is an objection on relevancy.

The testimony already is, and if it has not been introduced, we will introduce it, and we shall prove that Mr. von Opel said to a witness, who will be called here, that the Opel family were very clever, and that in the event of war with the United States, it would turn out that ownership of Uebersee was in Swiss hands, and it was stated if Switzerland became involved, it would turn out that the ownership was in Latin American hands.

We propose to further prove that the 36,900 shares of Harvard Brewery stock, which is one of the companies, we shall show was held in an account for Mrs. von Opel, held in Sociedad Monte Franco.

We want to show that and corroborate the state-
1246 ment that Mr. von Opel was also using Latin American holding companies to conceal German ownership, and, at least, the 36,000 shares of Harvard Brewery were in Sociedad Monte Franco at one time, almost exactly at the same time as the conversation was had, as we will prove, from our witness.

Mr. Ingoldsby: We will stipulate that certainly the shares of Harvard stock were in this company at this particular time, and that the property belonged to the wife. In other words, we will agree and stipulate, but I submit we want to know the relevancy and competency. If this has that purpose, we would like to know the relevancy.

Mr. Burling: This is cross examination, Your Honor. I don't know all about this, and I want to find out by the domination of the witness over the corporation, and the negotiations with Fritz von Opel, whether he was using the Brazilian company as a cloak.

Mr. Ingoldsby: Our contention is undisputed that there is no property of Fritz von Opel or his wife, with the exception of the Harvard shares which have just been mentioned, which were, however, in the South American country.

My general objection relates to this, that it is not a correct form for any searching investigation as to where any assets might be.

The Court: Well, is this an asset of the corporation in which he is a managing officer?

1247 Mr. Ingoldsby: No, this is not.

The 36,000 shares of Harvard Brewery, it is my understanding, is the property of Martha von Opel, or Margo von Opel, the wife of Fritz.

Mr. Burling: And I dispute that. I deny she had any assets of such size, and whereas they might have been carried in her name, they were the property of Uebersee

Finance Korporation, and I submit it is relevant to show and explore the South American holding of these assets.

The Court: If this man is an officer and knows about it, is it immaterial?

Mr. Ingoldsby: This relates to the 39,000 shares of Harvard stock, and it would not be worth over $39,000.

The Court: But he is talking about the procedure of the corporation.

I would have a simple time in ruling on this if he was called in regular sequence, but it is hard to anticipate the significance of his testimony when it is not in order.

I will take up a motion to strike at the proper time.

Mr. Ingoldsby: I'll let it stand that this should not be used as an investigation to see whether any additional assets might be found, or anything of that kind.

Mr. Burling: That is not the purpose. We have title to them.

1248 By Mr. Burling:

Q. Do you know what shares of Harvard Brewery are currently quoted on the Curb Exchange today? A. They have reached a new low of about $1.25.

Q. So at current prices, the 36,000 shares would be worth about $50,000? A. Mostly.

Q. Will you agree with me that the word Monte Franco, either in Portuguese or Spanish, is a literal translation of your name? A. I would.

Q. Did you have anything to do with setting up this commercial corporation in Sao Paulo? A. No. I can explain it.

Q. Please do. A. In May, 1940, when I left Switzerland, the invasion of Switzerland seemed to be imminent.

At that time the Brazilian branch of the family who were caught in Germany with a fortune didn't want to get caught again, and they wanted certain assets held by Adler transferred, held in New York for transfer to Brazil.

I was on the boat, and on my arrival in New York, I was informed that they founded the corporation called Monte Franco, because they wanted the assets, and I was in charge partly, however, sir.

Q. Can you explain how the 36,900 shares of Har-
1249 vard Brewery came to be held by Sociedad Monte Franco? A. Yes.

Q. Will you do so? A. The 36,600 shares, among many securities, were transferred from Adler accounts to Monte Franco, for the purpose I just pointed out, and by mistake these 36,000 shares, which were the property of Mrs. von Opel, went with other assets down to Brazil because they weren't held in behalf of Mrs. von Opel, I think, in New York, but for Adler & Company, and after the mistake was cleared up, the shares went back and were as a consequence taken by the Alien Property Custodian.

Q. You say the shares have recently reached a new low of $1.25? A. Yes.

Q. Do you know what they were worth approximately in the spring of '41? A. Just about the same. I think that in the years from 1937 to about the year 1942, or before maybe 1943, they fluctuated between one-half a dollar to seven-eighths of a dollar. I don't know the statistics.

Q. Now, you know, do you not, that Mr. von Opel placed the shares of Uebersee in a safe deposit box at the Sweizerische Credit Anstalt? A. That is correct.

1250 Q. Do you know what he did with the keys for that box? A. Mr. von Opel opened the safe in his name in the Sweizerische Credit Anstalt.

I had a key and a power of attorney to open the safe, together with Mr. Gang.

Q. When did you receive the key and from whom? A. That is many years ago. I really could not tell, offhand.

Q. Well, you have been worrying about that key ever since 1935, have you not? A. Me?

Q. Yes. A. No.

Q. Well, what is your best recollection as to when you received the key? A. Well, probably shortly after the Uebersee stock was acquired by Mr. von Opel.

Q. This was sometime in early '32? A. Maybe, but I don't recollect.

Q. How long did you continue to hold the key? A. Well, these things happened many years ago and I am certain I could establish exact dates, but I think I had it for several years. I think the shares finally went out of, came out of the safe.

1251 Q. When did they finally come out of the box? A. The shares came out of the box—I could not say. I am sorry, I cannot establish the right date, but certainly they came out at the time they were sold to the Sweizerische Credit.

Q. And that was in '36, was it not? A. Yes.

Q. So all during the year 1935 you were in possession of the key, were you not? A. Well, the safe was, as it goes, I was in possession of one.

Q. And if Mr. von Opel's testimony that he lost his key is accepted, then you were in possession of the sole key; is that right? A. It would have been easy to take another safe and issue new keys.

Q. Did you do that? A. No, I didn't.

Q. So you had the only key to the box in which the Uebersee shares were held? A. It is technical.

Q. Whether it is technical, you had the key? A. Yes, but I don't know exactly when I had it.

Q. I thought you testified up until then that the sole—

A. (Interposing) I don't remember the date, but cer-

1252 tainly the shares were in the box, not later than '36, maybe.

Q. I am talking about all of '35. If we accept Mr. von Opel's testimony that he lost his key, then it is your testimony, is it not, that you held the only key to the box during the year '35? A. If Mr. von Opel lost his key, It would have been this way.

Q. Very good. He so testified.

Now, did you ever have a talk with Mr. von Opel in the course of which he asked you to hold the key as agent for his father? A. No, I don't remember that.

Q. You had no conversation of any sort with respect to your holding the key on behalf of Wilhelm von Opel? A. I would not remember that.

Q. Would you say you don't remember, or you are sure you didn't? A. It may be that there was once conversation at the time this—I had the key in order to produce the stock for voting purposes, and also I had the key because the shares were serving as collateral for loans granted by Adler & Company to the corporation.

Q. Try to listen to my questions and answer them. A. Yes.

Q. I asked you: Do you mean you don't remem-
1253 ber having a conversation with Fritz von Opel in the course of which he said that he wanted you to hold the key as agent for his father, or is it your testimony that you are sure no such conversation took place? A. Since I never was agent for his father, it could not have taken place this way.

Q. So you are morally certain that no conversation, such as I have described, ever took place? A. I had so many conversations, but I don't know the point you are trying to make.

Q. Are you familiar with the concept known in Continental law as the usufruct? A. Yes.

Q. Did you ever see the agreement under which Wilhelm von Opel gave his shares, 600 shares of Opel stock to Fritz von Opel? A. I don't remember when I saw this agreement for the first time.

Anyway, I do remember that I didn't act as agent for Wilhelm von Opel.

Q. But I am getting to something else.

You understand, do you not, that if you had held the key as agent for Wilhelm von Opel, that would have constituted

delivery to him of the asset, and that would have brought into existence the usufruct? Did you not know that?

1254 A. No.

Q. Did you not know that? A. No, but I have already stated, I didn't hold the key as agent, and furthermore, how could this usufruct be established in this way if the shares served for collateral for loans granted? Otherwise, that would be absolutely contradictory.

Q. We will let the lawyers argue about that one. A. Well, I am not a lawye.

Q. At any rate, the purpose of my questioning is to see if you do not understand that it would be very important if you did, in fact, act as Wilhelm von Opel's agent, because that fact would bring into existence the usufruct? A. I never acted as his agent.

Q. But you understand it would be very important if you did, don't you? In other words, you are not at a loss to know what I am questioning you about? A. If you say so.

Q. I will ask you once more.

Did you say you were not a lawyer? A. I am not a lawyer.

Q. Did you ever study law? A. Partly only. I studied national economy.

Q. Will you describe what legal education you have had? A. I graduated from the University, in National Economy.

1255 Q. Will you describe what legal education you have had? That is what I asked you.

Have you never studied law at all? A. No; only partly; a few lectures I attended.

Q. Now, I want to know what your testimony is. Are you saying just that you had a lot of conversations with Fritz von Opel and you don't remember whether or not he ever asked you to serve as his father's agent and hold the key, or is it your testimony that you feel sure you had no such conversation? A. I am sure that I never acted as agent.

Q. Really, Dr. Frankenberg, you are a very well educated and experienced man. I am sure you understand. Please answer my questions. A. If Mr. Fritz von Opel—

Q. (Interposing) I didn't ask you about "if."

Are you saying you don't remember, or are you saying—

Mr. Gallagher: (Interposing) It would simplify it if Mr. Burling would ask two questions, instead of giving alternative questions, which are confusing him.

The Court: It is very difficult.

By the Court:

Q. When you got the keys to the box, or at or about that time, do you remember having a conversation with Mr. von Opel in which you stated that you would hold the key as agent of Wilhelm von Opel? A. Most cer-
1256 tainly not, because—

Q. (Interposing) You remember you didn't have it? A. At that time, certainly. Two keys were in existence.

Q. Your present memory, what is in your mind, not what you might have done or reasons for it, do you hold in your minds as to whether you spoke about agency or discussed this or not? A. I would say not.

Q. You have a clear memory in your mind that it was not discussed? A. Oh, yes, I never did.

Q. Well, then, your memory is that you didn't. That is the only way we know you didn't.

Mr. Burling: Would you ask him if he remembers if he didn't at some later time, after the key was first handed to him.

The Court: We are speaking, Mr. Frankenberg, and we have to speak in Court here about memories, and we ask witnesses what they carry in their minds, and the lawyers do the arguing before me.

What you carry in your mind is what he is talking about.

The Witness: Yes; thank you.

By Mr. Burling:

Q. Would your answer to His Honor's question be
1257 the same if he asked you if you ever had a conversation with von Opel after he first handed you the key, a conversation about holding the key as Wilhelm von Opel's agent? A. Not holding the key for Wilhelm von Opel as agent.

Q. You had no such conversation at any time? A. I don't think so.

Q. When did you first see the record in the Gold case? A. I remember that Mr. von Opel showed to me this book.

Q. When? A. Maybe '39. I don't know when, but I never took the attention.

Q. Will you stand up, please?

Do you recognize this gentleman who just stood up? A. Certainly, I do.

Q. He is Mr. Worthington? A. Yes, sir.

Q. Did you tell him that you were a Doctor of Civil Law? A. Civil Law, that is?

Q. Yes. Did you tell him that? A. I don't remember that.

Q. Now, I want to read from the affidavit of Fritz von Opel, dated June 7, 1935, reading from folio 197, at page 66, in the middle of the page; have you found the
1258 place? A. Page 68?

Q. Page 66, folio 197. A. Yes, I have it.

Q. I want to read the following words to you:

"The 97 bearer shares of Uebersee which I acquired in the manner above stated are now on deposit in a vault in my name, No. 1917, with the Swiss Credit Anstalt in Zurich, Switzerland, the key to which is in the possession of Dr. Frankenberg. This key is held by Dr. Frankenberg as agent and representative of my father, Wilhelm von Opel, for the purpose of safeguarding his usufruct."

Now, on June 7, 1935, was the key to the box in your possession? A. That I would not remember. I told you

already that I don't recollect for how many years I had the key.

Q. And at that time were you the agent and representative of Wilhelm von Opel? A. No, I was not.

Q. Now, the fact is, is it not, that in 1935 a copy of this affidavit was sent to you for your information; isn't that so? A. I would not remember.

Q. At any rate, when you first did discover this, did you say to Fritz von Opel: that this is a terrible mistake; that I never was your father's agent; and your state-
1259 ment under oath is a mistake and incorrect? A. Maybe at that time Fritz von Opel was of the opinion that I was a sort of agent.

Q. I wonder if you will try to answer the question. A. I didn't say that to him, no.

Q. Did you say to any agent of the United States Government that it had been misinformed with respect to your acting as agent for Wilhelm von Opel? A. (There was no response.)

Q. You will have to answer. Do not shake your head, as the reporter cannot write that down.

What is the answer, please? A. No.

Q. Now, at the time the Gold case came to trial in the District Court, Southern District of New York, Mr. Kressel represented the plaintiff corporation here, did he not? A. He did.

Q. Is it not a fact that at that time you saw this affidavit? A. Mr. von Opel's affidavit?

Q. Yes. A. That is probably so.

Q. Didn't you know that the affidavit contained a misstatement about you? A. I didn't know about that.

1260 Q. When you saw the affidavit you knew Fritz von Opel swore that you were Wilhelm von Opel's agent in holding the key, didn't you? A. Now, at the time this matter came to my attention, I will now say about what—

Q. (Interposing) Will you answer the question? That is not true? A. That is true; yes.

Q. Didn't you learn of this at the time the lawsuit was tried? A. No.

Q. Didn't you testify about that a minute ago? A. No.

Mr. Burling: Well, excuse me.

Mr. Gallagher: The record doesn't show that.

The Court: He can ask him if he did question him.

By Mr. Burling:

Q. Didn't you say that you probably saw this affidavit during the trial of this action, and that is the Gold case in the Southern District of New York? A. I am very sorry, but I must have misunderstood the question, and I didn't want to say that.

Q. Well, you did see it at an earlier date, did you not? A. No.

1261 Q. Some earlier date, two years ago, you said just that, didn't you?

Perhaps I can refresh your recollection. A. If you please.

Q. You were interrogated by Mr. Worthington, whom you just identified, were you not? A. Yes.

Q. Did you give him the following answers to the following questions:

"Question: So that you never represented Wilhelm von Opel?"

This is page 37, and the answer is:

Answer: No, never. I wasn't in the picture at all at that time.

"Question: Did any discussions ever come up with respect to the obligations of Fritz or Uebersee to Wilhelm under this usufruct?

"Answer: No.

"Question: Have you ever read this affidavit that was filed in the so-called Gold case?

"Answer: Yes, I am sorry I did, yes, but at the time, as a matter of fact, it was filed, I had no knowledge about it. It got to my knowledge out of this lawsuit which arose later on, which was handled by Mr. Kressel, and only then at that time I had seen it, because I did not work on it," and then it goes on.

1262 Did you see it at the time of the lawsuit? It was handed to Mr. Kressel? A. I don't even know at what time this was.

Q. Well, I don't care what time it was, but did you see it at the time of the lawsuit? A. I really don't remember.

Q. But do you remember telling Mr. Worthington you did see it at the time of the lawsuit? Will you answer the question, please? A. I it is on the record, I probably said so.

Q. Do you have any explanation how you came to say that to Mr. Worthington? A. No, I haven't.

Q. Did you say farther, and now I am reading from pages 38 and 41, three lines from the bottom of page 38:

"Now, according to our, at that time European conception, we thought it was the good right of Uebersee to claim this gold and to have it here and have it earmarked for the Swiss National Bank. That was the content of this lawsuit. Now, there was one point which apparently here was considered possibly to be weak, and that would have been if Uebersee had been doing business within the United States. So, therefore, apparently the people in charge of this lawsuit, which, after all, was lost, trying to prove in this affidavit first of all, that they were not doing

1263 business here, and so on, and so forth; and then they wanted to stress the point that Fritz von Opel, who was the only one who always was during these years within the United States as a visitor from time to time, that he could not possibly be, that his presence here could not possibly be established as if Uebersee was doing business through him, or something like that. Therefore, he tried in this affidavit, as well as could be done, to distance

himself to a very considerable extent, as I remember, from Uebersee and from these assets. But then, I perfectly agree that if somebody reads it now, he has a perfectly other impression necessarily, because everything which was stated here was just to put back from him—well, I mean he could do so, because there is nothing—therefore, he produced this gift agreement and all this sort of stuff, which after all, later on, was nullified anyway. But at that time, in his opinion apparently, it was still in existence."

Did you so testify? A. Yes, I did.

Q. Now, does that refresh your recollection as to when you first saw the Gold case affidavit? A. I really—it is hard to answer the question, I never was in charge of the lawsuit, and I never knew very much about it, so that was my impression, I stated there. I surely would say something just about the same now. It was a personal im-

1264 pression I had.

Q. Did you ever talk to Wilhelm von Opel about the usufruct provisions? A. No.

Q. Did you ever say that you had talked to Wilhelm von Opel about the usufruct?

1265 Mr. Gallagher: Can we have that question made a little bit more specific, Your Honor, as to when and where?

Mr. Burling: I am coming to it, as soon as I find it in the record, please.

By Mr. Burling:

Q. Reading from page 32, at the middle of the page, of the Worthington-Looney interrogation.

"Question: Did you ever talk to Wilhelm von Opel about this usufruct?

"Answer: Well, I remember he told me in these years about it, but I wasn't—that was before I came into the picture."

Do you remember now that you had a talk with Wilhelm about the usufruct?

Mr. Gallagher: Your Honor, I submit he hasn't asked the witness the whole answer contained here in the transcript; and the whole portion of it should be read.

The Court: He is asking him his recollection, now, and if you want to ask him the rest of it, you can do so later.

The Witness: For the moment, I really don't remember the occasion I referred to in this testimony.

By Mr. Burling:

Q. You don't deny you did say to Mr. Worthington and to Mr. Looney that you did talk to Wilhelm about
1266 the usufruct? A. For the moment I really couldn't remember.

Q. I ask you to examine Defendant's Exhibit 50-A, which has been already marked in evidence. It is a document taken from the records of Uebersee. I ask you to read it and state what it is. A. Well, that apparently refers to a request of the Swiss authorities that the corporation should submit under the Swiss banking law.

Q. And I want to read you a sentence in this letter and ask you to explain it—

"The entire capital of our company comes from a single group which also has a controlling interest in the capital stock."

That letter is dated November 27, 1935. Can you identify the letter, or name the persons who formed the group which then had a controlling interest in the capital stock of Uebersee? A. The only person with an interest was Fritz von Opel. It is the usual way to express it.

Why should a corporation state that it has only a single shareholder? So, for this purpose, it was perfectly satisfactory to say it is a single group.

Q. The Swiss Federal Bank Commission is an agency of the Swiss Federal Government, is it not? A. I couldn't

answer this question. It is something like, yes.

1267 Q. And is it the Swiss banking practice for bankers to tell the truth to government agencies, or not? A. The issue in this case was, whether, for instance, if the corporation would have been active in accepting moneys, or something like that.

Q. Will you answer my question? A. It has no bearing on the case.

Q. Will you answer my question, anyhow? A. Certainly, if we would have thought the request to state exactly who this group is, we would have certainly complied.

Q. Yes; but is it the general practice to be truthful in reporting to the Swiss Government? A. It is certainly a general practice.

Q. You do not regard it as misleading to state that the controlling interest in the corporation is owned by a group, when in fact it isn't owned by a group but by a single person? Is that correct? A. Not for this purpose.

Q. Not for this purpose—very good.

Mr. Burling: I ask Your Honor's indulgence. We seem to have made a mistake in the exhibit number.

By Mr. Burling:

1268 Q. I ask you to look at Defendant's Exhibit 66-A for identification, which is already in evidence, to look at the last page, and state whether a copy of this was not sent to you. A. Well, it says it was sent to me; but I do not know what is in it.

Q. Look at it and see if you cannot recall receiving this, will you please?

This is a report, Dr. Frankenberg, made by Dr. Meyer, of a conference had in the United States Treasury in 1935. Does that refresh your recollection? A. Well, I do not remember anything about receiving this document. And if I read it, it may—

Q. Well, all right; I ask you to look at the section bearing the number 1—"Relations of Mr. Fritz von Opel to Uebersee." A. Yes.

Q. Do you remember receiving the information contained therein? A. I do not remember, no.

Q. You have no recollection of learning that the United States Treasury Department sought information concerning the ownership of Uebersee, and was told it was owned by a group? A. By a group?

Q. That is what Dr. Meyer says, is it not—

1269 "Mr. Bernstein insisted it should be known to me whether Mr. von Opel has a controlling interest. I repeated that a group of which Mr. von Opel was a member had a controlling interest, but that I did not know the composition of that group."

A. Well, maybe—

Mr. Gallagher: What is the question, now, please?

Mr. Burling: "Do you remember receiving this information?"

The Witness: I do not remember having received this information.

By Mr. Burling:

Q. Do you know of a Liechtensteinean legal entity called "Frima"? A. Yes.

Q. And is it correct that whatever it is, Frima is a legal institution which does not exist in any law except that of Liechtenstein? A. That is correct.

Q. It is substantially unexplainable, except in Liechtensteinean terms? Is that correct? A. It is very hard to explain. It comes nearest to a so-called "Stiftung", according to the Swiss law.

Q. It is not exactly a trust, is it? A. No; in the American sense, it is no trust whatsoever. And also it

1270 has characteristics of a beneficiary, but it has not the qualities of an American trust.

Q. In fact, you said to Mr. Worthington and to Mr. Looney as follows, did you not?—

"That is something which does not exist in the whole world, except in the principality of Lichtenstein. I could not explain what that is here, because of the laws here. It is nothing. It is just a name. As far as this 'Frima' ever acted or was in the books, it does not mean anything else but Fritz."

A. That is correct, because he was the beneficial owner of same.

Q. Will you look at Defendant's Exhibit 67-A and state whether or not that is a telegram which you sent to your bank in Zurich from Montreal? A. Yes, I think I sent this.

Q. Who is the person named in the second word of the telegram?—"Henggeler"? A. It is a lawyer and a member of the board of directors of Uebersee.

Q. The first sentence of this telegram or cable to your bank is:

"Inform Henggeler sale of stock to if possible 1271 more than eleven purchasers, to be effective immediately, not later than end of month."

What stock did you refer to? A. Apparently the Uebersee stock.

Q. And why did you direct your bank to inform Henggeler that the Uebersee shares were to be sold to more than eleven purchasers immediately? A. It was, at that time, Mr. von Opel was wishing to do so; I do not recollect the reasons; but that is what he was doing.

Q. You do not know the reasons? A. Well, it may be that partly the reasons were to get an institution in between this ownership, since I think at that time it must have been the time Nazy pressure was exercised upon his father.

And then it seems to me that at that time it was also desirable from the point of view that the company should not be considered to be a personaliy-owned company.

Q. Didn't you and Fritz von Opel have discussions in 1936, the substance of which was that since he was the sole owner of Frima, which in turn was the sole owner of Uebersee, that Uebersee was to be taxed as a personal holding company? A. I remember very faintly having had these discussions. But I too know that later on this whole setup was not recognized by the Treasury anyway,
1272 and it was settled in some way or another.

Q. Yes; but that was not until 1942, though? Isn't that right? A. I don't know when. I would say in 1940 or so, or maybe in 1941.

Q. Oh, you think that it was in 1941 that the personal holding company tax was in fact imposed back for the years from 1936 to 1941? A. I think so.

Q. But, at any rate, isn't it true that the transfer of the shares in 1936 was primarily for the purpose of evading or avoiding, as the case may be, the American personal holding company tax? A. Well, it was, as far as I understand, as far as I remember this matter better, because it was discussed later on in 1940. As a matter of fact, it was, as far as I was concerned or informed, in 1940, perfectly legal to avoid this tax until the tax law was changed later on, the effect of which I never did know.

Q. That would depend upon whether the sale that took place in 1936 was a sham, wouldn't it? A. I mean, it was perfectly legal to do so in 1936. I am not a tax expert.

Q. Who told you it was perfectly legal to do what was done in 1936? A. I remember the fact from the
1273 negotiations in 1940.

Q. All right. You advised the accountants for Uebersee in 1936, did you not, that in filling out returns hereafter they were to report that Uebersee was no longer a personal holding company? Do you remember that? A. I advised them?

Q. Yes, you did—didn't you? A. I don't think so. If I did s[illegible] then certainly I was convinced it was quite all right.

Mr. Burling: I am about to inquire concerning a document which is already in the possession of plaintiffs. It was taken from plaintiff's files, and it is the defendant's exhibit 83.

I ask a concession as to the genuineness of the photostat.

Mr. Gallagher: If it came from our files, it is perfectly all right. We concede it.

By Mr. Burling:

Q. I show you Defendant's Exhibit 83--which I now offer in evidence as conceded by the plaintiff—and ask you if that is not a letter which you received from Bayer & Clauson. A. Maybe I received this letter. As a matter of fact, I lived in Switzerland. I had not the slightest knowledge about the American taxation, not the slightest.

1274 (The letter referred to was marked and received in evidence as Defendant's Exhibit No. 83.)

By Mr. Burling:

Q. Well, I want to read you a sentence from it, and we will see about it—in paragraph 3:

"We are also in receipt of your letter of July 28, 1936, with respect to the question of doing business in the United States. Since we were informed by you in June that Uebersee is no longer a personal holding company, we will eliminate that tax from our consideration."

Now, did you, by letter dated July 28, 1936, advise Bayer & Clauson, the accountants for the plaintiff, that the plaintiff was no longer a personal holding company? A. I certainly do not remember having done so.

Q. Do you have a copy of that letter in your files? A. I don't think so. But if I did so, if anything of this kind

had been done, then I certainly was convinced it was so. I didn't understand anything about American tax law.

Q. You were advised by Bayer & Clauson in this letter that the personal holding company tax, which would be payable in 1936, and therefore it must have been assessed for 1935, was $28,736.64. Isn't that right? A. This letter says so. I am sure, if I received this letter, I wouldn't have to look at it, because I was pretty sure Bayer
1275 & Clauson handled the whole tax operation in the United States. I didn't care a thing about the tax operation in the United States.

Q. You knew that Bayer & Clauson didn't handle a fake, sham, or wash sale to the Swiss National in 1936, didn't you? Didn't you do that? A. I did it?

Q. Yes, didn't you?

The stenographer can't take down gestures, and I cannot understand what you mean.

Did you do it, or not?

Mr. Gallagher: Your Honor, we object to the form of the question—a fake, sham, or wash—the three connotations put on the sale, to which we object.

The Court: It might be possible for him to answer it a little later, whatever sale it was.

By Mr. Burling:

Q. Didn't you handle all the selling involved in 1936?. A. No; it wast handled by Henggeler. He was very much more familiar than I was with all this tax situation. He was in New York and informed Bayer & Clauson.

Q. But you informed Bayer & Clauson that the corporation was no longer a personal holding company? A. Because I was told so.

Q. Who told you so? A. Maybe Mr. von Opel.
1276 I don't know who it was. I wouldn't have any judgment on it.

Q. But, at any rate, you had handled the Swiss end of the transaction? A. Henggeler did.

Q. But later didn't you go back to Zurich and handle this situation personally? A. No; Dr. Henggeler handled it.

Q. You did not? A. No.

Q. I see.

Mr. Burling: I will ask the plaintiffs to concede Defendant's Exhibit 84 and 84-A, which is a photostat of a cable taken from the files of the plaintiff corporation.

Mr. Gallagher: We concede it, if it is from our files.

Mr. Burling: Thank you.

May I have this marked?

(The documents referred to were marked and received in evidence as Defendant's Exhibits 84 and 84-A.)

Mr. Burling: I ask for a similar concession concerning 85 and 85-A.

Mr. Gallagher: The same concession.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 85 and 85-A.)

1277 By Mr. Burling:

Q. I show you Defendant's Exhibit 85-A and ask you if that is not a cable which you received from your bank, dated June 17, 1936.

Mr. Ingoldsby: Your Honor, I don't object so particularly to this particular question; but I submit that great latitude has been allowed Mr. Burling in going beyond the scope of the direct examination. We have not raised any question on his cross examination on points which he himself has raised. But inasmuch as it has gone to this extent

during the period of time, we wish to make the point now.

The Court: What is this particular point?

Mr. Ingoldsby: This particular matter goes into—

How would you describe that document?

Mr. Burling: It goes into this transaction which we say is a fake, a sham, a dishonest transfer, which this witness was principally instrumental in doing, which I put in to attack his credibility, and also to show the mala fides and to show a continuous action on his part to hide—and I will make an offer of proof—

I offer to prove through this witness that in 1936 Frima purported to transfer its shares to eleven Swiss dummies, who paid nothing for the shares. The shares were left in a Swiss bank.

The dummies gave options to Frima, and thus to
1278 Fritz von Opel, that they would sell back the shares at any time.

Also, von Opel contracted to purchase them at a later date. The purchase price was the same as the original purported sale price.

The purchasers never received the shares at any time; they were always held by the bank.

And we contend that this was solely a device for evading the American personal holding company tax. In 1939 it was used in a case almost identical to the case at bar; it was used to defraud the British Government, that is, the Government of Tanganyika, by reporting that assets located in Tanganyika, which were owned by Uebersee, were Swiss owned and not German owned, in 1939, at a time when Fritz von Opel admitted was still a German national.

The Court: Are you going to prove all that by this witness?

Mr. Burling: We can prove a great deal of that by this witness, if Your Honor please.

The Court: I suppose his objection is that it doesn't relate to anything brought out on direct.

Mr. Burling: If Your Honor please, they did allude to this sale.

The Court: Was that in the direct examination?

Mr. Ingoldsby: What question alludes to that sale?

Mr. Gallagher: That was in the cross examination.

1279 There was no question which alludes to this sale, Your Honor.

The Court: I didn't remember it on direct.

Mr. Gallagher: Not at all.

Mr. Ingoldsby: Your Honor, I think we have been very patient in raising the objections.

The Court: Of course, there is a rule about it. If you want to make him a witness on that, and it is material.

Mr. Burling: I think I am entitled to call him as my witness on this point, and then impeach him, because this witness testified he was then a director of the corporation. Our testimony is that he became a managing director, and the rule is that a party may call a hostile witness, if he is an officer or managing agent of the corporation, and may not only ask him leading questions, but may impeach him.

Mr. Ingoldsby: I think the rule by which Mr. Burling is bound on that question is the statute in effect in the District of Columbia relating to hostile witnesses.

Mr. Burling: I think it is the Rules of Civil Procedure.

The Court: Yes, I think the Rules of Civil Procedure supersedes that.

Mr. Burling: May I read the rule, Your Honor? It is 43 (b), the second sentence:

"A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse

1280 party and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party."

It is perfectly obvious Uebersee is an adverse party, and this man is an officer of the adverse party, and the rule in direct terms covers the matter.

Mr. Ingoldsby: We still complain about the relevancy of it, Your Honor. We have no question that in 1936 the personal holding company tax was in effect. And all this would come down to would be an argument whether or not this was a lawful tax evasion or a legal tax avoidance. I don't see that it has any materiality on any of the issues in this case. And it is stipulated by all the parties that all of the stock of Uebersee is owned by Frima.

The Court: You have circumstances in regard to this disposition of the stock and the proceeds of it, which indicate that for some purpose it got out into these various groups which you chart there yourselves to show that. And I presume the circumstances might have some bearing upon the question of ownership.

Mr. Ingoldsby: May I say this, in that respect, Your Honor? First of all that the chart was prepared only for the purposes of lending something towards the ultimate end of clarity.

And I might also point out on the chart, for the
1281 purposes of clarity, it went to the Swiss banking company, to Frima, and we ourselves X'd it out as immaterial, inasmuch as it was covered by the stipulation.

The Court: The point I have in mind is, it seems to me, though I don't know the case as well as you gentlemen seem to, that it seems to me that the progress of the transfer of these stocks all the way through might have some bearing on the ownership.

Mr. Ingoldsby: On the ownership ultimately being in a national of an enemy nation?

The Court: Yes. The whole problem of ownership is before the Court, and whatever transactions went on in regard to this property might have had some significance. I don't know.

Mr. Ingoldsby: Do you contend, Mr. Burling, that that has any bearing, whether a beneficial or real interest was owned by Wilhelm and Marta von Opel?

Mr. Burling: I am surprised at the contention that this was X'd out. I think it was put in after the transaction was reversed in 1941, after the personal holding company liability was assessed, notwithstanding the transaction, and it was washed out.

My contention is that this has a very real bearing on the bona fides of the claim that Fritz von Opel is the beneficial owner.

1282 The Court: That is what I understood his point was.

Mr. Ingoldsby: If that is his point, then I suppose that is quite different. But otherwise I would ask him to explain how.

Mr. Burling: I could do that better by argument.

Mr. Ingoldsby: Your Honor, I don't want to be argumentative.

The Court: I would like to follow the pertinency of it, myself. Maybe I am wrong. Tell me again what your point of relevancy is to the issue.

Mr. Burling: The relevancy to the issue is that a fraudulent and sham transaction was made here in 1936, which hid the true ownership of this stock, whether Fritz or his father. I think it is relevant to show they held the stock in a manner which was fraudulent and a sham, from 1936 to 1941, as being on the probability that the presently asserted holding is a sham and fraudulent. I particular urge that arguinent, because I can show that in September, 1941, in an alien property proceeding—not a lawsuit, but an administrative proceeding in Tanganyika—this device was used to defraud the British Alien Property Custodian.

The Court: By these people?

Mr. Burling: By these people, by this corporation, and by its officers and agents, yes, Your Honor.

Mr. Ingoldsby: I might say this, if that is the

1283 purpose, we might partially stipulate our joint ways through it. In other words, we would be willing to stipulate to the effect that at the time the stock was transferred

to Frima, that one of the principal purposes of the transfer was to avoid the effects of the personal holding company tax law.

Mr. Burling: And will you further stipulate it was false, sham and frudulent transaction?

Mr. Ingoldsby: No, certainly not.

Mr. Burling: Then I think I have the right to adduce evidence on that point, Your Honor.

Mr. Gallagher: Your Honor, it was transferred in 1936 to the Swiss we concede for the purpose of tax avoidance, and it is contended upon the part of the Government that it was for the purpose of avoiding taxes.

Mr. Burling: I concede nothing happened, but it was a pure sham.

Mr. Gallagher: Will you state it was not held by the bank?

Mr. Burling: It was held by the bank, although that is the wrong bank. But I contend the parties participated in a sham transaction, what Dr. Kronstein says is a Scheinvertrag. And we could put the evidence in, and you make a motion to strike.

The Court: There are limits to what you can prove as to the transactions of the parties. It may have some
1284 relevancy to ownership. I don't know what it will develop.

Mr. Gallagher: The chain of title, as to whether it was through Wilhelm or Fritz has nothing to do with that little detour that took place. It went out and came back to the same parties.

The Court: I think his point, starting with the transaction back at October 5, 1931, and tracing it all through, is that in the history with respect to the disposition of this stock, there were a series of what he claims to have been misrepresentations made from time to time—one in New York, and in this particular case, and now I think he is saying over there; that with respect to this very stock there were a series of misrepresentations, as I understand.

Mr. Burling: That is exactly right, Your Honor.

The Court: And that would be persuasive upon the Court in deciding if they went through a number of these, all dealing with the same stock, that then I would draw the conclusion that this testimony in this case on their part is equally to be considered, unless there is a showing in this case that it wasn't so.

Well, I will take it, and we will keep it within reasonable limitations, I suppose, and you can move to strike it a little later.

You see, this witness is called a little out of turn, and I can tell a little better at the end of the case than I
1285 can now. I will take it provisionally.

By Mr. Burling:

Q. Is this document, Defendant's Exhibit 85-A, a telegram you received from your bank? A. It probably is.

Q. And do you see the words—

"Bankgesellschaft agrees to retention dollars and guaranty of margin of $20,000 on the part of Adler subject to definite contractual settlement after your return."

Do you remember receiving that? A. I don't remember at all whether I received it. But it may be that I did.

Q. Does that recall to your mind that the settlement of this shares sale in 1936 did not go through until after your return to Zurich? A. This wire refers to a margin which was to be added by Adler with the Bankgesellschaft, and that is what it refers to, apparently, because the entire negotiation was by Gesellschaft, as conducted by Dr. Henggeler, and so far as von Opel was involved, because they had to put up the margin of $20,000.

Mr. Burling: I ask the genuineness of Defendant's Exhibit 86-A and its translation be admitted as coming from plaintiff's files (handing the documents to counsel
1286 for plaintiff).

Mr. Gallagher: Yes, we concede that.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 86 and 86-A.)

By Mr. Burling:

Q. Will you examine Defendant's Exhibit 86-A, which is headed "Memorandum for Dr. Frankenberg", and state whether you received that at any time.

Mr. Burling: May I have one moment, if Your Honor please?

The Court: All right.

Mr. Burling: May I have a concession as to Defendant's Exhibit 87-A, please (handing the document to counsel for plaintiff)?

By Mr. Burling:

Q. Have you answered my question whether you received Defendant's Exhibit 86? A. I cannot say I received it.

Mr. Gallagher: It is conceded.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 87 and 87-A.)

By Mr. Burling:

Q. Will you look at Defendant's Exhibit 87, which purports to be a copy of a letter to Dr. Henggeler, on
1287 June 19, 1936. Is that right?

Will you look at 86 and see if it is not true that that indicates that there were enclosed to you a memorandum or letter from the Bankgesellschaft of June 19 to Dr. Henggeler? It is Item No. 3. A. That is obviously what it is.

Q. So that Defendant's Exhibit 87 would appear to have been sent to you? Is that correct? A. Pardon me.

Q. A copy of Defendant's Exhibit 87 would appear to have been enclosed with Defendant's Exhibit 86, which is

a memorandum to you? A. It appears so. But I could not remember it. I just want to repeat that in doing this transaction up here, or being in any way connected with it, I was purely doing nothing against any law, or to deceive, or to do any fraudulent business, as you expressed it.

Q. Isn't it the fact that the bank with which the contract or agreement between Frima and the bank was made, from the Swiss Bank Company, by the Swiss Union Bank— A. The Union Bank of Switzerland, yes.

Q. And isn't it true that Frima contracted with the Union Bank on the following terms?—

One, it was to transfer its Uebersee shares to the bank;

Two, that the bank was then to find persons nom-
1288 inal purchasers;

Three, that cross actions were to be obtained whereby the purchasers were to agree to sell back the shares at the original purchase price;

Four, that the purchasers were to have the right to require the repurchase of the shares.

— Am I right so far? A. I think you are right. It was perfectly legal.

Q. And, in addition, a term of the agreement was that the purchasers were to contract either to give proxies to the bank, which would give proxies to Frima to vote the shares; or, in the alternative, the so-called purchasers were to contract to vote the shares as instructed by the bank and thus by Frima. A. That is the way it was done.

Q. That is the way it was done? A. Yes.

Q. And the purchasers did not receive the shares, did they? A. Oh, yes.

Q. They did? A. Oh, yes.

Q. Aren't you mistaken about that? Weren't the shares deposited in a bank called the "Bank in Baden"? A. Well, that is an affiliation of the Union Bank of Switzer-
1289 land, apparently.

Q. Did the purchasers ever take the shares into their own two hands, like that (indicating)? A. I couldn't tell you.

Q. Well, you know they didn't, don't you? A. No. Well, because the Bank of Baden could have delivered them.

Q. Didn't the Bank of Baden contract not to deliver them? A. Not to my knowledge.

Q. Don't you know, also, that the nominal purchase price was not paid by the purchasers? A. No.

Q. You don't know that? A. No; I am pretty sure that the purchasers paid the purchase price.

Q. Weren't the purchasers credited by the Union Bank of Switzerland, with the purchase price which they nominally paid? Isn't that how it was done? A. No. The purchase was paid, as far as I can remember, the purchase price, to the Union Bank of Switzerland. But the Union Bank of Switzerland didn't turn over the purchase price to Frima, but kept them in a special account.

Q. They were kept in blocked account, against the obligation of Frima to repurchase the shares? Isn't
1290 that right? A. That is correct. And Frima was entitled to invest this money in stocks.

Q. But it had to be held in the bank? A. It had to be held in the bank.

Q. So the purchasers acquired no beneficial or economic interest in the shares of Overseas, did they? A. Yes; they paid for it.

Q. What interest did they acquire, if they had to sell the shares back at the same price they paid, and if they didn't have any power to vote the stock? A. You see, it is very hard to explain these matters which were absolutely usual in Switzerland and 100 per cent unusual in this country. Because, after all, Switzerland was the place where capital from all over the world used to come to, just for the purpose of hiding.

Q. For the purpose of being hidden? A. Yes, for the purpose of being hidden. And that was, in Switzerland, very often the case.

Q. And that is the fact in the case at bar, isn't it? A. The what?

Q. The case here, Uebersee Finanz-Korporation against Clark? A. No.

1291 Q. It isn't? A. Not at all.

Q. I see. A. But, as a matter of fact, if you look at the history of Europe, you will understand that this feeling was much more popular than it possibly could be in this country, where things never were tangled and without the overthrowing of governments and revolutions.

Q. I didn't understand one part of your testimony. Do you think that the purchasers actually did receive the certificates, or is it merely your testimony that for all you know the bank in Baden may have delivered the certificates to them? A. I think there isn't the slightest difference.

Q. I would just like to know. A. Yes, I wouldn't know.

Q. You don't have any idea? A. No; but the proxies were issued by the purchasers.

Q. It is within your personal knowledge, is it not, that there were negotiations between the United States Treasury and Mr. von Opel in 1941, and that he then had to pay the personal holding company tax anyhow? A. I remember it.

Q. And, after that, these transactions were reversed, and the purported holders were washed out? Isn't that
1292 correct? A. Well, that had nothing to do with the thing whatsoever.

Q. Well, it is correct, isn't it? A. It is the fact. But at that time, and it may be even a great damage to this case now, it was the idea of dissolving the company, Uebersee, and to transfer all its assets to Fritz von Opel here in the United States. That was only—that was not in consequence of the settlement of this tax case.

Q. I see. A. But everybody felt—

Q. I take it you accuse me of the error of post hoc propter hoc. A. Pardon me?

Q. I will withdraw that.

In any event, you personally know that Fritz von Opel paid the tax, the personal holding company tax, as official

stockholder, do you not, for the years 1936 through 1941? A. I think as far as I remember there was an arrangement worked out with the tax authorities; and, as far as I remember, in the meantime, before anybody paid these taxes, all the property was vested, and as far as I further remember, until a couple of years ago, I heard the Alien Property Custodian didn't pay it.

Q. At any rate, after the arrangement whereby
1293 Fritz did pay the taxes, this transaction was reversed? Isn't that correct? A. I couldn't tell you when the tax settlement was, and when the reversing was. As far as I see it, it had no connection whatsoever.

Q. I want to ask you about this portion of your interrogation, reading from page 29:

Were you asked this question, and did you give this answer?—

"Question: Now, coming back to the sale, you say that Fritz came to you and wanted to sell these shares for some purpose?

"Answer: Yes.

"Question: Did he tell you what the purpose was?

"Answer: No, I could not remember. It was a complicated matter. First of all, he was always squeezed, or his father was squeezed always because he gave this large amount of foreign exchange, and there were inquiries. So maybe he thought at that time that it was wise to have these shares just to show they were not owned by them at all any more. But I do not exactly recollect."

Can you remember that testimony? A. I can't remember it for the moment; but I said some things similar before.

1294 Q. What I am interested in is what you meant by saying that it was wise to have these shares to show they were not owned by them at all any more?

What was the antecedent of the pronoun "them"? A. I can only say that that maybe is a misprint, or I may have been not expressing myself very carefully. But there is no doubt about only Fritz von Opel owning the shares.

Q. You are sure it isn't a slip of the tongue by which you really meant the Opel family? A. No, certainly not.

Q. What does the word "Consortium" meaning in Swiss banking practice? A. Well, a verbal consideration would mean people coming together for the purpose of some business.

Q. Would the word "syndicate" be a fair translation? A. It would not be a bad translation.

Q. What is "Consortium O"? A. In the case of—

Q. As reflected in Uebersee's books? A. That it was just a name.

Q. What does it mean? A. As a matter of fact, first it was Fritz—I remember having seen this item—and then Mr. Geng, the bookkeeper, put it just in this way. It is a designation which might have been used also in the
1295 preliminary stages of forming a corporation; so later on, as you will see, the ownership of this property from "Consortium O" went into Frima and Frima was Fritz von Opel again. So it couldn't have any real meaning.

Q. Fritz von Opel is the gentleman sitting here by me? A. Yes, sir.

Q. Does he look to you like a group of people, or a syndicate? A. It was a technical sort of a name, just put in by the bookkeeper. I didn't advise him to do so, and I wouldn't know who could have done it.

Q. Didn't you understand "Consortium O" was the syndicate Opel, or the Opel family? A. But there wasn't any syndicate Opel.

Q. That is the issue in this case. My question is, didn't you understand that "Consortium O" meant the Opel family? A. No. It can be misleading, but I am pretty sure it wasn't meant in this way.

Q. Changing the subject, you never had any business discussion at all with Crittenden in Zurich in the summer of 1937? Is that testimony? A. As far as I remember,

yes. Because I had nothing that I really could discuss with Mr. Crittenden.

Q. You were staying on that occasion in the Dolder
1296 Grand Hotel in Zurich? A. Correct.

Q. Didn't Crittenden and Bayer come to the hotel and have a business discussion with you? A. I remember they came with their wives, and had dinner.

Q. No; didn't they have a business discussion with you? A. I must say it was really news to me, it escaped completely out of my mind that I even met them in Zurich, and I couldn't recollect to have any sort of a business discussion with Mr. Crittenden anyway, because it was out of my competence. Mr. von Opel was handling this oil picture. I didn't understand anything about oil; so I couldn't discuss it, or he couldn't discuss it with me.

Q. Adler & Company has some famous painting or paintings by a famous painter somewhere in its offices in Zurich? Is that right? A. It used to have, formerly.

Q. And it had in 1937? A. Yes.

Q. It had a collection of Degas paintings? A. There were three, as a matter of fact.

Q. And one of them was behind the door, so that when you opened the door, the painting was behind the
1297 door? Isn't that correct? A. It was a sort of a conference room, and there were these paintings hanging. Which one was which, I wouldn't know.

Q. But you remember vividly when you opened the door, or if the door was left open, you couldn't see the painting? A. There were at least five paintings.

Q. I am talking about one of the three biggest paintings. Didn't you have a discussion with Mr. Crittenden in which you said this Degas painting was very badly hung, because when you opened the door you couldn't see it?

Have you any idea at all how Mr. Crittenden came to learn there Degas paintings in the Adler Bank? A. Oh, I remember he visited with me at the Adler Bank.

Q. In the fall of 1937, were you in New York? A. Yes.

Q. Where did you stay? A. I stayed at the Plaza.

Q. You, Mr. von Opel, and Mr. and Mrs. Critten had dinner together at the Plaza, did you not? A. Mr. Crittenden?

Q. Mr. and Mrs. Crittenden, Mr. von Opel, and you? A. It is possible, but I really wouldn't remember.

Q. Now, on the day, or within a day or two either
1298 way, of a dinner which you had with the Crittendens and von Opel, didn't you in fact have a discussion with Mr. Crittenden about the oil business, at which Mr. von Opel was not present? A. Mr. Crittenden was a great talker, and what he told me about the oil business, I wouldn't know, if I listened to it at all, because I wouldn't understand anything of it.

Q. All right. But did you have a business conversation? A. No, no business conversation.

Q. Wait a minute. I haven't finished my question—Did you have a business conversation with Crittenden in New York, at which von Opel wasn't present, and I fix the date as of about October, 1937? A. I really couldn't remember; I do not believe it.

Q. You do not believe you did? A. I really do not believe it, because I don't know what I possibly could have discussed with him.

Q. At about this time did you, Fritz von Opel, and Mason Houghland have a business discussion at the Plaza Hotel in New York? A. Yes, I met there Mr. Houghland.

Q. Do you see Mr. Houghland in this courtroom?

Mr. Burling: Will you stand up, please, Mr. Houghland, and come forward?

(A gentleman in the courtroom stood and came
1299 forward.)

By Mr. Burling:

Q. Do you recognize Mr. Houghland? A. Faintly; but he wouldn't recognize me, either.

Q. He can testify about that. Do you recognize this gentleman? A. I believe that is Mr. Houghland.

Q. Thank you. Now, did you, Fritz von Opel, and Houghland have a business discussion at the Plaza, downstairs? A. I remember vaguely that we sat downstairs and we had a business talk.

Q. And in the course of this discussion did you tell Mr. Houghland you could not approve a proposal he made? A. I don't think so.

Q. Do you remember he talked about setting up small subsidiary corporations? A. I was the first time in this country in 1936, for six weeks, and then in the summer or fall in 1937. What should I understanding about putting up large tank stations or small ones? I am simply, I have no knowledge of this sort of business.

Q. Well, you had been discussing the investments of Uebersee ever since 1932 with Fritz von Opel, had you not? A. Yes, from time to time.

Q. And so you knew particularly about Spur, did you not?—Spur Distributing Company? A. I knew what
1300 it was, yes.

Q. And didn't you talk about a proposal to have Spur set up some small subsidiaries with Houghland in 1937? A. I could not imagine what performance that should be, on my part, in such a business.

Q. Whether or not you could imagine it, are you certain you did not have such a conversation? A. At least, I do not remember it, not in the slightest way.

Q. Let me read a section from folio 175 of the affidavit of Fritz von Opel:

"In the summer of 1932 and after my return to Europe I discussed with Dr. Frankenberg my concern over the future gasoline supply of the company. I feared increasing pressure of the larger companies against smaller competitors like Spur Distributing Company, Inc., and I decided in concert with Dr. Frankenberg to take steps towards supplementing the gasoline distributing system

of Spur with oil reserves and a refinery so as to constitute an independent unit and protect Spur for a period of some 15 years."

In so far as that relates to your conversations between you and von Opel, is that statement correct? A. I really do not remember. But I do remember that once, maybe much later, or at that time, I couldn't tell you, Fritz
1301 von Opel told me his idea that Spur should have an independent supply of oil. And therefore he was inclined to acquire oil properties. That may well be.

Q. Now, did you ever decide to take steps to supplement Spur with oil reserves? A. No, most certainly not, as I was never instrumental in any of these investments. Also, I didn't make any contract with any of the managers of the American companies. That wasn't in the side of the business I was in.

Q. You understand what the words "in concert with" mean, don't you? A. "In concert with"?

Q. Yes. I will show you. It says here, does it not?—"I decided, in concert with Dr. Frankenberg, to take steps".

Do you think that is wrong? A. I don't know whether it is wrong. I can only repeat I never was instrumental in this sort of investments.

Q. You must know that it was either right or wrong. Either you helped Fritz von Opel decide, or you and he decided together—which is what he swears—or you didn't decide it together. Which is it? A. He told me about it—

Q. Which is it, please? A. But I can only repeat—
1302 Q. Will you answer my question? Did you and Fritz von Opel decide this in concert, or didn't you? A. Not the investments.

Mr. Burling: I have no further questions.

Mr. Ingoldsby: May we have just one moment, Your Honor?

Mr. Gallagher: Your Honor, we now move to strike Mr. Burling's testimony about any fraud with respect to the British Government. He stated he was going to prove this through this witness.

Mr. Burling: I just forgot it. I did omit it, Your Honor.

The Court: There is nothing to strike.

Mr. Burling: I apologize to counsel. I did forget the topic. I will go ahead. Thank you, Mr. Gallagher.

Mr. Gallagher: You are welcome.

The Court: Do you think you can complete this in ten or fifteen minutes?

Mr. Burling: This will take only five, Your Honor.

Mr. Gallagher: I won't take over ten, Your Honor.

The Court: All right. I have to leave here promptly at five. I will come back tonight and finish up, if it is necessary.

Mr. Burling: I don't believe it will be, Your Honor.

1303 I ask plaintiffs to concede Defendant's Exhibit 88-A as being a photostat of a document contained in plaintiff's files.

By Mr. Burling:

Q. Will you look at Defendant's Exhibit 88-A and state whether you have seen it before?

Mr. Burling: Since it is conceded, Your Honor, may I read it?

The Court: Yes.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 88 and 88-A.)

Mr. Burling: This letter is dated November 14, 1939, addressed to Messrs. Leslie, Strachan & Co., Chartered Accountants, Standard Bank Chambers, P. O. Box 45, Dar es Salaam."

And I ask Your to note judicially that that is the administrative capital of the mandated territory of Tanganyika.

"We are in receipt of your letter dated October 23rd and beg to hand you enclosed certificate from the Union Bank of Switzerland, Zurich, duly legalised by the British Consulat General, Zurich, which you may present to the Custodian. We assume that this certificate will induce the Custodian to convince himself that all holders of our shares are of Swiss nationality. At the same time he may gather from it that Mr. von Opel is not a
1304 shareholder of our company. For these reasons we presume that the release of our property will take place in due time."

And the rest of the letter is irrelevant.

By Mr. Burling:

Q. Did you ever see that letter before? A. I don't think so.

Q. How do you write your initial? And I call attention to a mark appearing in the lower right-hand corner of the photostat and ask you if that is your initial. A. I usually wouldn't write it this way.

Q. I see. All right.

You know, do you not, that Overseas in 1939, prior to the outbreak of war, owned a plantation in Tanganyika? A. Yes.

Q. And you know that that plantation was seized by the British Custodian as being German owned, in September, 1939? A. I remember that.

Q. You remember it. And you know, do you not, that these two different letters were sent to Tanganyika by Overseas, and that as the result of such correspondence, the British Custodian returned the plantation to Overseas' manager, or to Overseas' possession? A. When was it?

1305 Q. In November or December, 1939, was it not?

Don't you recall that Overseas got back the vested plantation? A. I think so, yes.

Q. Yes, I think so, too. A. But, after all, at that time there was no fraud involved.

Q. There was no war in September, October, and November, 1939? A. Yes; but, first of all, the shares were really owned by Swiss people, and, as I remember, the Union Bank of Switzerland.

The Court (to Mr. Burling): He said there was no fraud, not "war".

Mr. Burling: Oh, I am sorry.

This is the last document we have on this topic.

(The documents referred to were marked for identification as Defendant's Exhibits 89 and 89-A.)

Mr. Burling: I ask that Defendant's Exhibit 89-A be conceded as a photostat of a document taken from plaintiff's files.

Mr. Gallagher: Yes.

Mr. Burling: I offer it in evidence, Your Honor.

(The documents previously marked for identification Defendant's Exhibits 89 and 89-A were received in evidence.)

1306 By Mr. Burling:

Q. Will you examine this letter and state whether you ever saw it before—and since it is conceded to be a genuine document, I will read it, if I may, Your Honor.

This is a letter to Uebersee, from Messrs. Leslie, Strachan & Company, Chartered Accountants, of Dar es Salaam, Tanganyika Territory, dated October 23, 1939:

"Dear Sirs: We are obliged for your letter of 6th October which reached us last week by airmail.

"The certificate from the Union Bank of Switzerland has been submitted to the Custodian of Enemy Property here. Our translation of the German is as follows '97 parts

are lying with us and are in Swiss possession' and the Custodian points out that the actual ownership of the shares is not stated.

"Would you please therefore obtain from the Bank a similar letter giving the names of the actual holders of the shares at 3rd September 1939 and their nationality in each case. Should the 97 shares, or a majority of them, be held by a company the Custodian will eventually require similar information regarding the holding company.

"It is believed locally that Mr. von Opel is a German subject and a majority shareholder in your company and the Custodian requests full information regarding 1307 his relation to the company.

"At the same time we could point out that your estate has not been confiscated. The Custodian, following the internment of the manager, placed watchmen and caretakers on the estate to safeguard the assets. These, he will be pleased to withdraw on receipt of evidence that the estate belonged at 3rd September last to neutral subjects.

"It will assist us if you will include an English translation of any certificate obtained from the Bank.

"We are informed that Mr. Tassin was a member of the Nazi party and although some of the interness have been released, there is no immediate possibility of his being released on parole.

"Yours faithfully, Leslie, Strachan & Co."

By Mr. Burling:

Q. Did you see that letter when it was received? A. I have no recollection of it.

Q. Did you not understand that the Custodian in Tanganyika wanted to know the real or true ownership of the estate, the plantation, in Tanganyika?

Mr. Ingoldsby: May I ask the answer to the prior question?

The Reporter (reading): "Answer: I have no recollection of it."

1308 Mr. Ingoldsby: Then, Your Honor, I submit the next question is improper, if he doesn't have any recollection of it.

The Court: He probably would have to speak for himself.

Mr. Burling: He said he didn't remember this letter, but he did remember the taking of possession of the plantation.

The Court: His recollection wouldn't be material, unless he took some action on it, at least his interpretation.

The Witness: I really didn't do anything about it.

Mr. Burling: All right. That is all I have.

Redirect Examination

By Mr. Gallagher:

Q. Just a few questions, Dr. Frankenberg—

First of all, Mr. Burling has gone into that New York affidavit and stressed the use of a word here or a word there. Let me read to you from the commencement of this proceeding:

"Mr. Worthington: Gentlemen; this is just merely a little informal further investigation that is being exercised under the powers of the Alien Property Custodian as they have been continued by the new Executive Order under the Trading with the Enemy Act, and it will be merely an informal interrogation. We want everyone to feel free to enter into the proceedings in any way they wish."

1309 As you know, the interrogation went on, and was there any necessity, in your opinion at that time, to weigh very carefully every word?

Had you been sworn in, let me ask, at that time? A. No, I had not.

Q. And when was the oath administered to you? A. Afterwards.

Q. And how did that come about? A. I asked him what you call an informal hearing.

Q. Yes? A. Because I wasn't aware at all that an oath would have to be taken.

Q. Yes, and what happened in connection with the oath? When was that taken? When did that come about? A. As I remember, Mr. Worthington or Mr. Looney said, "Now, let us take an oath."

Q. And this was after you had testified? A. After both of us had testified.

Q. And you agreed to it? A. Yes, I agreed to it.

Q. And prior to that time you thought it was a little pleasant get-together, to give them information with which they could go to Europe and investigate? A. That was the purpose of it.

1310 Q. And you endeavored to cooperate to the fullest possible extent? A. That is correct.

Mr. Burling: I appreciate the lateness of the hour; but Mr. Gallagher knows it is not proper to lead his own witness and put words in his mouth.

Mr. Gallagher: All right, Mr. Burling.

By Mr. Gallagher:

Q. Now, plaintiffs have offered in evidence, Dr. Frankenberg, Plaintiff's Exhibits 78 and 79, 78 being a letter of June 25, 1936, which purports to reflect the sales of the shares to the Swiss. A. Yes.

Q. And Plaintiff's Exhibit 79 reflects that the 97 shares have been deposited with the Union Bank on May 30, 1936.

And Plaintiff's Exhibit 80 reflects that they were passed over to the Union Bank on the 22nd of June, 1936, and finally returned to the Union Bank of Zurich on November 4, 1941.

Now, Dr. Frankenberg, is it not a fact that interest was paid during the five-year period, in the amount of some nine or ten thousand dollars a year to the holders of this stock? A. That is correct.

1311 Q. So a total of some fifty thousand dollars in interest was paid to the persons who had purchased this stock? Is that not correct? A. That is correct.

Q. Now, as far as Mr. Houghland is concerned, in any of your conversations with Mr. Houghland, did you ever say you personally would not permit, or you would not give your approval, or you would not in any way—

Mr. Burling: I object to the leading questions in this fashion, Your Honor.

Mr. Gallagher: I think, on redirect, Your Honor, I can meet the type of questions counsel was asking.

By Mr. Gallagher:

Q. Did you state you would not approve or would not permit or did you express in any other fashion to Mr. Houghland as to oil properties or subsidiaries in Spur? A. I couldn't possibly have done so.

The Court: The question is not whether you could have, but whether you did.

Mr. Burling: The million dollar loan in the oil refineries related to Mr. Crittenden and not to Mr. Houghland.

Mr. Gallagher: Very well. We will strike the question, and let us frame it in this way:

By Mr. Gallagher:

Q. Did you ever in any conversation with Mr.
1312 Houghland, to your recollection, tell him you would not approve of any deals or permit of any financial

transaction with reference to Mr. Fritz von Opel? A. To the very best of my recollection, I never did.

Q. Did you ever act as Mr. Wilhelm von Opel's agent, at his direction? A. I certainly did not.

Q. And did you ever have any oral or written agreement with Mr. Wilhelm von Opel personally to act as his agent? A. I never had.

Q. Now, in connection with this key, let us see if we can clear that up a little bit. If I understand correctly, the key to this safety deposit box was given to you some time in the year or years preceding 1935, that Mr. Houghland is talking about. Is that correct? A. That is correct.

Q. At that time you have the key to the box, with Uebersee shares in it, and you have the key for two purposes: One, to take the shares out to vote them. A. As stated before.

Mr. Burling: Again I object, Your Honor.

The Court: He has been over that before.

Mr. Gallagher: I thought it was important, Your Honor.

The Court: And you are leading him.

Mr. Gallagher: All right, sir.

1313 By Mr. Gallagher:

Q. Will you state the purposes for which you were originally given the key and for which you had it in your possession? A. I once wish to state that I had the key, but what was much more essential, I had the power of attorney to go with Mr. Geng, and not even myself alone, because it was a key you could not come to the bank and open the safe. In Switzerland you have to be registered, and I had to have a power of attorney issued by Mr. von Opel, to open the safe.

The purpose was to get the stock out from time to time, to vote it; and, second, the Uebersee shares were at some time, I don't know, whether it was 1933 or 1934, but anyway

at that time they were serving as collateral for loans granted by Adler & Company, to the corporation here, the Uebersee Corporation.

Q. You say as a positive fact that in year 1935 you did not have any conversation at all with Fritz von Opel, in which he asked you, in which he asked you, to act as his father's agent? Did you say you never had such a conversation? A. I didn't well remember. It may be such a conversation, that he asked me. It wouldn't have meant anything important, it wouldn't be of any importance to me.

Please understand that Mr. von Opel came to me
1314 as a banker. He paid for the stock. He bought all the securities in the corporation; so he could do with his money as he pleased. Whether he stipulated usufract for his father, or gave his money away, let us say, as a gift to the University of Zurich, it was just up to him.

Q. You would not say you positively remember, then, you never had such a conversation with Mr. von Opel? Is that true? A. It may be.

Mr. Burling: I can't hear.

The Witness: It may be, if you ask me now, I remembered sometime, but I couldn't fix the year, there was a certain pressure upon Wilhelm von Opel, and in this connection—I really do not very well recollect, but if you ask me, I might say that it may be that some time there was such a conversation, in which he asked me whether I would act. But I didn't pay any attention to that.

By Mr. Gallagher:

Q. Now, Mr. Burling read to you a portion of an answer that is in this interrogation with Mr. Worthington here in New York, and he only read the first part of your answer. I want to read the whole answer to you now, and ask you whether or not this still is the fact. First the question:

"Did you ever talk to Wilhelm von Opel about this usufruct?

1315 "Answer: Well, I remember he told me in these years about it; but I wasn't—that was before I came into the picture."

That is where Mr. Burling stopped, and here is the rest of it:

"The moment I came into the picture it was only the moment Uebersee was acquired, when the company was acquired; and then the assets first held in custody were Uebersee's, and then later on acquired by Uebersee. But Uebersee never, nor I myself, made any sort of any arrangements with Wilhelm von Opel."

Is that a fact? A. That is a fact.

Mr. Gallagher: That is all.

Recross Examination

By Mr. Burling:

Q. Your testimony now is that you do not know whether or not you had a conversation in the year 1935 in which Fritz von Opel asked you to serve as his father's agent in holding the key? You have no knowledge either way? A. I couldn't recall it. If you would give me some more clues to it, I might remember.

The Court (to the witness): He wanted to know what your testimony was.

The Witness: Oh, the testimony.

1316 The Court: What you told Mr. Gallagher a moment ago.

The Witness: I said that it may have been that such conversations took place.

By Mr. Burling:

Q. And that is contrary to what you told me while I was examining you, was it not? A. It may be.

Q. Didn't you tell me you thought it very unlikely that such a conversation took place, and you had no recollection of it? A. By being asked again, it came to my mind it might have been.

Q. Do you recall His Honor questioned you about this particular point?

Do you understand the phrase, "His Honor"? I am referring to the Judge. A. Yes, sir.

Q. Didn't you tell His Honor that your memory was that no such conversation took place? A. If you say I said so, in being asked again, it came to my mind.

Q. If it comes to your mind, it means you remember something now that you didn't a few minutes ago. What is it you now remember about that conversation? A. As I said, Mr. Burling, it reminds me of being in con-
1317 nection with certain fines imposed upon Wilhelm von Opel, and that is—you have to understand, I never was and I never did any business with Wilhelm von Opel. So now if, for instance, Fritz would have decided to do anything, I don't know what, in favor of his father or whatever he pleased—

Q. Try to answer the question, won't you please?

The Court: He wants to know what has come into your mind now, since you last spoke to him about it. What is that is in your mind now that you did in 1935, or what was said about this agency?

The Witness: It may be that Fritz at some time, for the reason I just said, asked me whether or not I might act as a trustee. But I do not—

By Mr. Burling:

Q. Some recollection has come into your mind since I last examined you? A. Apparently, yes.

Q. Apparently. And I ask you what you can remember. Do you remember something now you didn't a half an hour ago? A. I am not familiar with this matter for years. In talking it over again and again—

Q. Do you now remember—and the answer is yes or no to this question—do you now remember something you didn't a half an hour or an hour ago—yes or no? A. Yes, but—

1318 Q. Thank you. What is it that has come into your mind within the past hour? A. That in some time there might have been a request, there might have been a conversation in which this usufruct business came up again.

Q. Do you have any memory of it, or are you just assuming it might have happened? A. No.

Q. So you don't remember anything— A. I couldn't put it in exact words.

Q. I don't want you to put it in exact words. I want you to answer my question. You don't remember anything now you didn't an hour ago, do you? A. Yes; in talking over it again—

Q. What is it you remember? A. That some sort of conversation—

Q You just testified you don't have any memory of a conversation, but that it might have happened? A. Yes, it might have happened, in connection with the Wilhelm von Opel, that it might have been.

Q. Do you remember anything at all about what was said in such a conversation?

What? A: I couldn't possibly—

1319 Q. The answer is yes or no. Do you remember anything at all? A. I do not remember anything—

Q. I didn't ask you that. I said, do you remember anything at all? A. The only thing I can remember is that

he might have asked me sometimes whether or not I would take care of this usufruct—something like that. But it is very vague.

Q. You have some recollection of that? A. Very faint.

Q. A very faint recollection. A. Because it wasn't none of my business.

Q. Fine; thank you. We have only four minutes. Please stop volunteering, and answer my questions.

You have no idea of what was said, or who said it? Is that correct? A. Who said it?—Fritz von Opel.

Q. But you have no idea of what words he used in saying it? A. No.

Q Have you any idea as to when this conversation took place? A. No. It must have been somewhere between 1934 and 1935, or so.

Mr. Burling: I ask if the reporter got the answer
1320 "no" to my question, "And so you have no idea as to what Fritz von Opel said?"

Mr. Gallagher: That wasn't the question. As to what somebody said, he said it was Fritz von Opel.

Mr. Burling: And I asked as to what words Fritz von Opel used, and he said no.

By Mr. Burling:

Q. In substance, have you any present memory as to what he said? A. It can have been only in the connection, as far as now I recollect, that whether I would take care of the usufruct, or something like that.

Q. Take care of— A. But I—

Q. Please stop volunteering. What does "take care of the usufruct" mean to you? A. If it would come into existence.

Q. What did Fritz say about it? A. My memory isn't too good.

Q. Isn't it the fact, Dr. Frankenberg, that you don't recollect anything now that you didn't remember when I examined you first, and that you decided to change your testimony as a result of the tone of voice employed by Mr. Gallagher? A. I think so. I think it is very natural that after having discussed the question again and being
1321 asked again, that you search more profoundly the last memory you have in your head.

Q. But you don't seem to have brought up very much, do you, as a result of this profound search?

Just tell us now, and I will have to stop. Give us as best you can what you have now gotten out of your recollection as the result of this profound search you have made. A. He might have asked me—

Q. He might, or I might be Santa Claus. What do you remember as a fact? A. Whether I would have—

Q. He asked you? Is that the fact? A. As I pointed out before—

Q. Just tell us what you now remember, will you? A. I do not remember it exactly.

Q. What is it you do remember exactly? A. Therefore I wouldn't make a statement, in words, what he said, as I cannot remember.

Q. As best you can, tell us what you do remember. A. That he asked me to, in case the usufruct should be in existence or should come into existence, whether I would then take care of this situation on behalf of his father.

Q. But he didn't say a word to you about holding the key on behalf of his father as his father's agent, did he? A. No.

1322 Q. You are morally certain of that? A. I am absolutely morally certain of that.

Mr. Burling: Thank you.

Redirect Examination

By Mr. Gallagher:

Q. You have been holding this key in your possession, with the shares in the box, isn't that correct? You had a key for some during the thirties? A. Yes, for some time, but I couldn't tell you for what time I had it and for what time I didn't have it.

Mr. Gallagher: That is all.

Recross Examination

By Mr. Burling:

Q. But you are morally certain Fritz von Opel never asked you to hold the key as the agent for Wilhelm? A. To hold it?

Q. Yes. A. No.

Q. That is, you are certain he did not ask you to hold it for him? A. No, not as his agent.

Mr. Burling: All right.

Mr. Gallagher: That is all.

The Court: The witness is excused.

(Witness excused.)

1323 The Court: Tomorrow morning at 10 o'clock.

(Accordingly at 5 p. m. the trial was adjourned until 10 o'clock tomorrow morning, Tuesday, December 21, 1948.)

* * * * *

1326 Mr. Burling: May I address the Court, Your Honor?

The Court: Yes.

Mr. Burling: Mr. Gallagher has asked me to make a statement for the record, to clear up something that happened yesterday, and I will be glad to do it:

I was examining Dr. Frankenberg as to whether he had not selected documents in 1937 from the files of Uebersee and brought them back here. I take it is conceded that he did do that.

The issue arose, however, as to whether a piece of paper had not been removed from the file. It was a loose paper we saw, and Mr. Gallagher tells me he cannot find it.

The statement I wish to make is that I make no point of it. I asked for the production of the paper solely for the purpose of establishing that Dr. Frankenberg did select documents. Since that is conceded, and since my friend tells me he cannot find it, I withdraw my request for the production of the document.

Of course, there is no contention that anything was removed intentionally, but was merely lost.

Mr. Gallagher: Thank you, Mr. Burling.

Further in explanation, if Your Honor please, the content of the document is merely described as some apparently loose paper that I never even did see.

1327 Mr. Burling: Your Honor, we would like to call Special Agent Kiefer, so that he may return to his duties in New York.

The Court: Is there any objection?

Mr. Gallagher: No, Your Honor. We had, in our designation of witnesses, that Mr. Ingoldsby was going to cross examine him. He is not here yet; but we have no objection to proceeding with him.

The Court: All right.

Whereupon, HARRY KIEFER, called as a witness in behalf of the defendant, and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Baum:

Q. What is your full name, Mr. Kiefer? A. Harry Kiefer—K-i-e-f-e-r.

Q. And where do you reside? A. New York City.

Q. What is your occupation? A. I am a Special Agent of the Federal Bureau of Investigation.

Q. In what office of the Federal Bureau of Investigation? A. I am presently assigned to New York City.

Q. And how long have you been employed by the
1328 Federal Bureau of Investigation? A. Something over six and a half years.

Q. During the course of your duties as an agent of the bureau, did you ever have occasion to interview a Mr. Manfred Stansfield? A. Yes, I did.

Q. When did you interview him? A. I interviewed him on two occasions. The first interview occurred on June 4, 1947, in the New York office of the FBI, and the second interview occurred about August 9, 1948, at Mr. Stansfield's home in New York City.

Q. You were in the courtroom yesterday, were you not? A. Yes, I was.

Q. Did you see that Mr. Stansfield in this courtroom? A. Yes, I did.

Q. Now, referring to the interview in June, 1947, do you recall how long that interview lasted? A. Yes; it lasted almost two and a half hours.

Q. And during the course of that interview did you take any notes of what was said? A. Yes, I did.

Q. Is it a regular practice of the bureau for agents to take notes during interviews? A. Yes; normally in a case that is at all involved or where the interview will last for

any length of time, notes are usually taken.

1329 Q. And what is the purpose of those notes? A. Well, I imagine you would have two purposes—

First, in order to obtain the facts, with the idea in mind of preparing a report which will later be submitted to the defendant.

And, secondly, from those notes, normally, a statement may be drawn, dictated to a stenographer, and then submitted to the witness or the person being interviewed, for his signature.

Q. Did you request Mr. Stansfield to sign his statement? A. Yes, I did.

Q. Did he sign one? A. No, he did not.

Q. Now, what was the general subject of this interview with Mr. Stansfield in June, 1947? A. Generally I questioned Mr. Stansfield concerning the sale of the Adam Opel Automobile Company, some of the negotiations in that connection, to the General Motors Corporation of the United States.

Q. And in the course of this interview, did Mr. Stansfield make any statements concerning the capacity in which he participated in that sale? A. Yes, he did.

1330 Q. And what did he say at that time? A. He said early in the negotiations, perhaps in 1929, he represented the General Motors Corporation in Europe, in Germany; and that after the negotiations had begun, and he became more intimately acquainted with the von Opel family, that ultimately he had sort of a dual classification, both as a representative of General Motors Corporation and also of the Opel interests.

Q. And during the course of this interview did Mr. Stansfield refer to any statements concerning Swiss investments? A. Yes, he did.

Q. And will you please tell us of what you remember of those statements? A. Stansfield said that he and Wilhelm von Opel had spoken on a number of occasions concerning the chaotic economic and political conditions which

existed in Germany at that time; particularly were they chaotic for people of some substance or wealth.

And Stansfield said there was a little expression current at the time in Germany, which expression said something to the effect that gold or money was not everything, unless you had it invested in Switzerland.

I asked him whether or not Wilhelm von Opel ever used that expression in his presence, and he said yes, he
1331 had, that Wilhelm had said that to him on a number of occasions.

Q. By the way, Mr. Kiefer, I questioned you a moment ago about notes you took. Do you have those notes with you today? A. Yes, I have.

Q. During the course of your interview in June, 1947, did you have any conversations with Mr. Stansfield concerning Fritz von Opel's status as a Devisen Auslander? A. Yes, I did.

Q. Would you please tell us what was said? A. Well, I questioned Mr. Stansfield concerning his knowledge of whether or not Wilhelm von Opel had suggested to Fritz von Opel that Fritz obtain an Auslander classification.

Stansfield said he had no knowledge at all whether Wilhelm had made such a suggestion to Fritz. He said, however, that on a number of occasions Wilhelm von Opel had mentioned that it was fortunate that Fritz was so classified as an Auslander, because nobody knew what was going to happen in Germany, and that perhaps through Fritz Wilhelm might be able to invest something outside of Germany, so that later, regardless of what would ultimately happen in Germany, he, Wilhelm, could be taken care of in his old age by his son.

Q. Now, during the course of your interview with
1332 Mr. Stansfield, did you question him concerning a gift agreement of October 5, 1931? A. Yes, I did.

Q. Did you question him with respect to the date of the agreement? A. Yes.

Q. Would you please tell us the conversations you had with Mr. Stansfield concerning that date? A. Yes. I

questioned him particularly with reference to whether or not the date of October 5, 1931, might have been affixed to the gift agreement at some time other than the time when the gift agreement was actually signed by the parties.

Stansfield exhausted to some extent that question of date, and Stansfield said that he had some very vague recollection concerning conversations which took place regarding that date. But he had no present recollection of what those conversations were, or how or in what way they concerned the case.

I questioned Stansfield whether or not he could positively state that the instrument was not pre-dated. And he said that he could not positively state yes or no whether the instrument was or was not pre-dated. He thought that the signatures were affixed at the same time as the date which appeared on the instrument, but he couldn't

1333 positively state one way or the other.

Q. So I gather your answer is that he couldn't say whether or not the agreement was pre-dated? A. That is right.

Q. Did he exclude the possibility that it was pre-dated? A. No, he did not exclude the possibility. He said he could definitely say that it was not pre-dated.

Mr. Baum: That is all.

Cross Examination

By Mr. Ingoldsby:

Q. Mr. Kiefer, how long have you been an agent with the bureau? A. A little over six and a half years.

Q. And did you know anything about this case when you went to see Mr. Stansfield on June 4 of 1947? A. I had the background of the case in general. Would you like me to explain how I had that background?

Q. Yes; who gave it to you? A. The Department of Justice sent a memorandum to my headquarters in Washington, the Federal Bureau of Investigation Headquarters, and they in turn sent either that memorandum or perhaps

an abstract of that memorandum to the New York office, giving in general the background of the case, what litigation had taken place to date, and a request that cer-
1334 tain people be interviewed in connection with the case

On the basis of that memorandum, I made various inquiries.

Q. And who went with you on June 4, 1947, when you questioned Mr. Stansfield? A. The interview occurred in the New York office of the FBI. Mr. Stansfield came to our office, and Special Agent Walter C. Martinson was present at the time.

Q. Is he here today? A. No, he is not.

Q. Is he still with the bureau? A. Yes, he is; he is with the New York office.

Q. May I see the notes you made at that time? A. Yes, sure (handing them).

Q. Were these notes you have just handed me prepared while Mr. Stansfield was talking to you? A. Yes, they were.

Q. You heard Mr. Stansfield testify yesterday that you had not taken any notes? A. Yes, I did.

Q. And, as a result of this interview, you prepared a statement, you prepared a report to the bureau, did you not? A. Yes, I prepared a report to the bureau, not a statement.

Q. A customary agent's report? A. Yes.

1335 Q. Do you have a copy of that report with you? A. No, I do not.

Q. When was the last time you saw it? A. Last night, in Mr. Bower's office.

Q. Who is Mr. Bower? A. I beg your pardon—in Mr. Baum's office.

Q. But you do not have it with you today? A. No, I do not.

Q. And had you taken that copy of the report to Mr. Baum's office, or did he have it? A. He had it. I assume it was transmitted in the normal course of affairs.

Q. And did you read a copy of your report before you came down here from New York? A. In New York, yes.

Q. And you are quite certain you took these notes during the course of the interview? A. Well, yes; I am absolutely certain.

Q. And did Mr. Martinson also take notes? A. No, he did not.

Q. Did he write a report? A. No, he did not.

Q. Do you know that five or six of your agents have also interviewed Mr. Stansfield? A. No, I am not aware
1336 of that.

Q. You did not know that? A. No.

Q. When you went out to interview him, didn't you know he had been interrogated by other agents? A. I knew he had been questioned concerning Mr. Fritz von Opel, concerning his internment. But I didn't know how many agents interviewed him, or when the interviews had taken place.

Q. And you didn't take the trouble to look through the FBI reports in New York to see whether or not Mr. Stansfield had given statements to other agents on this same topic, before you went to interview Mr. Stansfield? Is that correct? A. I looked through the index of the office concerning what the interviews were about. But I am not positive that I saw whether statements had been taken, or not.

Q. What do you mean by "statements taken"? A. I thought you mentioned that statements were taken. By "statements" I meant something in the form of a signed statement.

Q. You meant a signed statement by the person being interviewed? A. That is right.

Q. And did you say you looked through the files of the bureau on that? A. I looked into the files of the bureau.

1337 Q. And did you find any signed statements had been obtained? A. I don't recall whether I found

any signed statements or not, I have no recollection of finding any.

Q. Did you read the reports of the agents who had interviewed Mr. von Opel, before you went out to interview him? A. As I recall, I looked over the reports to determine whether or not they had any connection with this case. But, as I recall, they had no connection with this case, or the facts of this case.

Q. Are you quite sure you read those reports? A. Yes, I looked over whatever was in the index. I don't recall whether there were any exhaustive reports in the index at all. But I glanced over whatever we had available in New York at the time.

Q. Do you remember seeing anything in any of those reports about pre-dating? A. No, I do not.

Q. And it is standard bureau practice to obtain a signed statement wherever possible, isn't it? A. There is no hard and fast rule concerning it. Certainly in a case like this, I think if the person being interviewed is agreeable, I think it would be usual to obtain a signed statement.

1338 Q. Well, you can't get a signed statement from anybody unless they are agreeable, can you? A. No.

Q. And did you say it was not standard practice to get a signed statement from a witness, from one who is likely to become a witness? A. I didn't say it was not standard practice. I said there was no hard and fast rule concerning it, and I thought it would be very likely to obtain such a statement in a case like this.

Q. And when did you ask Mr. Stansfield to sign a statement? A. At the conclusion of the interview on June 4, 1947.

Q. And did he refuse? A. Yes, he did.

Q. And he wouldn't sign the statement at that time? A. No. I asked him whether he would be agreeable to signing a statement when such a statement was drawn up.

Q. And did you show Mr. Stansfield the notes you took during the interview? A. No, I did not.

Q. Did you at any time submit any notes to Mr. Stansfield? A. Well, it was perfectly obvious that I was taking notes. As a matter of fact, on a number of occasions,
1339 as Stansfield testified yesterday, he pointed to the notes I was taking and said, "I want to talk to you off the record. Don't put it down."

And I explained to Mr. Stansfield that my job as a special agent is to obtain the facts, not to keep them off the record, and if he wanted to tell me what I wanted him to tell me, perfectly well and good, but I certainly intended to record everything about what he did say.

Q. And you told him that? A. Yes.

Q. And it was after that that you had this conversation about the pre-dating? A. Well, I don't recall whether it was after it or before it. On a number of occasions Stansfield said, "Now what I am going to say now, I want off the record."

And I explained to him that certainly I didn't intend to keep it off the record.

Q. You are acquainted with Mr. Stansfield's background, are you not? A. Just generally, yes.

Q. Generally you are acquainted with it? A. Yes.

Q. And it is your testimony that Mr. Stansfield was telling an FBI agent something about his conduct in this case which was off the record? A. No, no, nor at
1340 all. I would like very much to clear that up. Mr. Stansfield said, "I would like what I am about to say off the record."

And I said to him very definitely that I would not take what he was going to tell me on an off-the-record basis; that if he wanted to tell me, he could, and if he didn't want to tell me, he didn't have to, naturally; but what he was going to say to me was going to be recorded by me, since that was my job.

I said, "It is entirely up to you." Whatever he said, he did at his own volition.

Q. Did you ever show Mr. Stansfield the report you prepared? A. No, of course not.

Q. And you only had this one conversation on June 4 about pre-dating? Is that correct? A. That is correct.

Q. And you didn't talk to him any more about that topic? A. No. That is correct.

Q. And then you went to see him again on August 9? Is that correct? A. Of 1948.

Q. And you didn't go to see him, you didn't talk to him at all about pre-dating at that time, did you? A.

1341 No; that is true.

Q. Did you say in your direct examination that you had discussed with Mr. Stansfield the advantages of becoming a Devisen Auslander? A. I had discussed with Mr. Stansfield the status of Fritz von Opel as an Auslander.

Q. And who told you what an Auslander was? A. Well, I think I knew pretty well what an Auslander was, before this case.

Q. What was it. A. From just general knowledge.

But certainly the question of Fritz von Opel's status as an Auslander was included in that preliminary memorandum I spoke to you about at the beginning of the cross examination.

Q. And what is a Devisen Auslander? A. Well, as far as I can recall, it would be a person who would have a dual classification. He would be a citizen of Germany and he might be a citizen of another country.

Q. That is your understanding of a Devisen Auslander? A. Yes.

Q. Mr. Kiefer, let me refresh your recollection. Isn't this what happened in that conversation?—

You did talk about the possibility of pre-dating this agreement, to Mr. Stansfield. You did do that, didn't

1342 you? A. Yes, I did.

Q. And that was your primary reason in interviewing Mr. Stansfield, wasn't it? A. Oh, no. That was

certainly one of the primary reasons for interviewing him, but there were many things about which I had to question him, based upon the request of the Department of Justice.

Q. What were the other things you wanted to question him about? A. Well, to begin with, what his status was as far as an attorney is concerned, whom he represented at the negotiations, whether he represented the General Motors Corporation or whether he represented the Opel interests.

Q. On that phase of it right there, if I may interrupt you, yesterday—or I will put it this way:

At the time you had your interview with him in June, 1947, he told you the same thing about whom he represented as he told on the witness stand yesterday, didn't he? A. Yes, that is right.

Q. All right. What else did you talk to him about? A. And I spoke to him about whether or not—I wanted to speak to him about whether or not Wilhelm had used Fritz von Opel as a method of getting funds out of the country. I wanted to speak to him about—

Q. What did he tell you about that? A. It is go-
1343 ing to take some time. He stated—that is where the conversation concerning Auslander came up—he said Wilhelm had never told him, Stansfield, that he was using Fritz to get securities or wealth out of Germany. He said that he did not know whether or not Wilhelm had ever instructed Fritz in that matter. He had no knowledge of that at all.

But he could say that during conversations with Wilhelm, Wilhelm had said on a number of occasions that it was a good thing, that it was fortunate that Fritz was outside of Germany; and that Wilhelm was extremely concerned over his old age, and who would take care of him during his old age; and that perhaps through Fritz he would be able to get something outside of Germany so that he could be taken care of in his old age by his son.

Q. Those are your own words?—"Got something outside of Germany"—are they not? A. No, they are not. They are as close—I beg your pardon. They are my own words. But they are as close a quote of what Stansfield said as I can recall at the present time.

Q. You heard that portion of Mr. Stansfield's testimony yesterday, did you not? Do you recall hearing him say that it was fortunate that Fritz was outside of Germany?

Do you recall hearing him say that yesterday? A. 1944 I don't recall hearing him say that, Mr. Ingoldsby.

Q. You don't recall him saying that? A. I do not recall hearing him say that.

Q. You were here all during Mr. Stansfield's testimony? A. I was here during his testimony.

Q. Are you a lawyer? A. No, I am not.

Q. And how long have you been in the New York office? A. Since March, 1946.

Q. And what type of cases do you work on generally? A. Generally fraud against the Government, bankruptcy, the Federal Bank Act—or the National Bank Act—anti-trust cases.

Q. Let me ask you this, and see if this refreshes your recollection:

Do you recall in your conversation of June 4 with Mr. Stansfield whether you asked him about the pre-dating, and he told you he didn't know exactly what the date was, but whatever the date was on the agreement, that is the date it was signed? A. No, that is not the case at all.

Q. You do not recall it that way? A. No, I do not recall it that way at all.

Mr. Ingoldsby: That is all.

1345 *Redirect Examination*

By Mr. Baum:

Q. Mr. Ingoldsby just asked you, Mr. Kiefer, whether Mr. Stansfield has said he didn't remember the date of the agreement, and I believe you said that is not what he said? A. That is right.

Q. Did you have a copy of the agreement with you at the time of this interview? A. I had a copy of the English translation of the agreement.

Q. Which had been furnished you by whom? A. As I recall it, it had come up to the New York office attached to the Department memorandum.

Q. And did you show that copy of the English translation to Mr. Stansfield? A. Yes, I did.

Q. At the time you questioned him about the date? A. That is right; yes, I did.

Mr. Baum: Your Honor, inasmuch as cross examination has been based on these notes, I think I would like to offer them in evidence at this point.

Mr. Ingoldsby: We certainly object to that, Your Honor.

The Court: You object to it?

Mr. Ingoldsby: Yes, Your Honor.

The Court: Then they are not in evidence, if he objects.

1346 Mr. Ingoldsby: I haven't read them, but it is just a standard objection.

By Mr. Baum:

Q. Mr. Ingoldsby questioned you about a previous report of an interview with Mr. Stansfield, which I believe you said had something to do with the internment of Fritz von Opel. Is that correct? A. Yes, as I recall now, that is correct.

Q. Do you have any knowledge of why Mr. Fritz von Opel was interned?

Mr. Ingoldsby: I object, Your Honor.

The Court: Is that material?

Mr. Baum: I merely want to show, Your Honor, he knew nothing about this previous interrogation and had nothing to do with this case. The answer I expect to get is no.

The Court: Ask him the question as you said it just then, in that form.

By Mr. Baum:

Q. In the course of your duties as an agent of the Federal Bureau of Investigation, were you ever called upon to interrogate anyone in connection with the internment of Fritz von Opel? A. No, I was not.

Q. Did you see the report on the interview with Mr. Stansfield which related to the internment of Mr. 1347 von Opel? A. As I explained to Mr. Ingoldsby, it is normal practice to check the name of the person to be interviewed against the index of the field office, and to draw those files and look through them to determine whether or not there is any reason why this man should not be interviewed, something of that nature.

Now, I did that as usual practice in this case. But I cannot testify now as to whether or not I saw a particular report related to Fritz von Opel's internment, or not. I checked the name of Manfred Wronker-Flatow Stansfield in our index and looked at everything in that connection.

Q. Do you recall whether there was anything in any prior reports concerning an interrogation of Mr. Stansfield on this gift agreement? A. I have no recollection of his ever having been interviewed concerning the gift agreement.

Q. You testified that you reinterviewed Mr. Stansfield in August, 1948. A. That is right.

Q. Was that in connection with this same case? A. Well, as far as I am concerned, it was not. It was an entirely new case.

Q. What makes you say that?

Mr. Ingoldsby: I object, Your Honor. This isn't proper redirect.

1348 The Court: If it was not on the subject of this case, it would not be material.

Mr. Baum: Your Honor, I think counsel has attempted to show he went back and re-interviewed Mr. Stansfield and that nothing was then said about pre-dating. The fact is that there was an entirely different subject matter involved, and therefore there was a reason for it.

The Court: That is what he said.

Mr. Baum: All right, sir. No further questions.

Mr. Ingoldsby: No questions.

The Court: All right; you are excused.

(Witness excused.)

The Court: Now we have all of our hurried witnesses disposed of, don't we?

Mr. Gallagher: I believe so, Your Honor.

The Court: Let us finish up with Mr. von Opel, then.

Mr. Burling: At this time, if Your Honor please, Your Honor will recall the testimony when Mr. von Opel was last on the stand, on Friday, that Uebersee invested approximately $45,000 in Transdanubia bauxite.

The testimony also was that Mr. von Opel told the Miami hearing board, in the spring of 1942, that he had invested some $15,000 in Transdanubia bauxite.

He explained the discrepancy in terms of a deflation of the pengo or Hungarian unit of money.

1349 I therefore ask that the Court take judicial notice —and I am reading from the World Almanac for

1947—that the pengo in 1937 was at the rate of 19.779 cents;

That it went in 1938 to 19.727;

That in 1939 it was 19.238;

In 1940 it fell to 18.475;

In 1941 it went back up to 19.770.

Then I ask Your Honor to take judicial notice of the New International Year Book for 1943 and I am reading from page 309, under a section called "Finance"—

"The official exchange rate of the pengo in 1942 was $0.1949."

Mr. Gallagher: Your Honor, I object to the Court's taking judicial notice on the basis of this almanac Mr. Burling is reading from, because it doesn't set forth therein, from the statement he has just made, whether these were free pengos or blocked pengos.

I understand from our Swiss expert, Dr. Kaufmann here, there is quite a differentiation in the market; that a free pengo has a much higher rate of exchange against the dollar, whereas the blocked pengo had a very much lower rate of exchange. And Mr. von Opel was dealing with the pengos in Hungary at the time these loans were made in 1938.

Mr. Burling: If Your Honor please, there might be arguments which could be advanced, but there is
1350 no doubt that the Federal Reserve Board reported the pengo at this rate. I don't believe my friend will contest that this document says it; and I think unless there is some showing that it is not the official Federal Reserve Board rate, the judicial notice should be taken of what the official rate is.

I don't deny his right to argue there might have been foreign exchange control in Hungary. But the official rate was, at all relevant years except 1940, when it was 18, the official rate was nineteen point something cents.

Mr. Gallagher: Would you stipulate, Mr. Burling, that you are speaking of free pengos when you are making those quotes?

Mr. Burling: I am speaking of what the official exchange rate was. I don't know as to the foreign exchange.

Mr. Gallagher: We stand on our objection, Your Honor, unless the distinction is drawn between free pengos and blocked pengos.

The Court: You had better give me what information all of you have on the subject, and I will decide at the end of the case whether I can judicially notice. I understand when you come to judicially notice a matter, you can have recourse to documents and testimony of those who have knowledge.

Mr. Burling: I believe, if Your Honor please, ordinarily when commonly used texts on matters of public knowledge which are beyond dispute, as to what the Federal
1351 Reserve Board said the exchange rate was, are presented.

The Court: Well, I suppose if the Federal Reserve Board documents say it, I can get it from that.

Mr. Burling: I will bring in the original document, rather than an almanac.

The Court: I don't rule that is not competent. I say at the end of the case I will go on what you have.

I don't think that is a valid objection, Mr. Gallagher. I think the point is that when a Judge has called to his attention matters of standard or historical note or tables of exchange and things of that sort, he may look at any number of sources, it may be, and decide at the end what he finds to be the established fact that he can notice.

And I don't think it is confined to any one particular proposition. It may be that you have one almanac, and maybe you can get another. I don't know. Maybe they are all the same. Maybe there isn't a distinction such as you are talking about. Maybe there is; I don't know.

Mr. Gallagher: That is the reason I wanted to bring Your Honor's attention at this time to a distinction be-

tween the blocked pengo and the free pengo, since Mr. Burling is making quite a point of the fact that he said it was fifteen thousand instead of forty-five thousand.

The Court: I will look at these authorities, and such others as you want to present.

1352 Mr. Gallagher: Thank you.

Whereupon, FRITZ VON OPEL returned to the stand and was examined and testified further as follows:

Cross Examination (Resumed)

By Mr. Burling:

Q. In 1938 and 1939 you yourself participated in technical activities relating to the production of bauxite, did you not? A. In what?

Q. Technical, engineering activities relating to bauxite production.

Mr. Gallagher: What year was that, Mr. Burling, please?

Mr. Burling: 1938 and 1939.

The Witness: I didn't do too much. I had several experts doing it.

By Mr. Burling:

Q. What were the names of your experts who were doing it? A. There was Mr. von Krausz.

Q. K-r-a-u-s-s? A. K-r-a-u-s-z.

Q. s-s or s-z? A. s-z, in Hungary.

1353 Q. By the way, have you known him for a long time? A. Yes, I think I knew him since 1935. I met him in connection with this matter.

Q. I see. He was a mining engineer in Hungary? A. He was an engineer, and a geographer.

Q. A geographer? A. Yes, and versed in those matters of mapping out areas.

Q. And what position did he hold in Transdanubia Bauxit? A. He was one of the managers. The other manager was a man by the name of Dr. Timar.

Q. T-i-m-a-r? A. Yes, right.

Q. Was there a man named Somogyi?—S-o-m-o-g-y-i? A. I think he was a mining engineer.

Q. Employed by or an official of Transdanubia? Is that right? A. That is possible, for the time being; he wasn't continuously employed.

Q. Who was a man named Saluschinscy? A. Saluschinscy was a lawyer. Gyula was his first name.

Q. What was his first name? A. G-y-u-l-a.

1354 Q. Didn't you yourself carry on discussions of a technical or engineering nature with respect to the production of bauxite in the years 1938 and 1939? A. I discussed the general problems with Mr. von Krausz. It isn't a very complicated procedure. You just dig a hole in the ground and get this mineral out. It isn't very complicated.

Q. You prospect for bauxite, do you not, by drilling small holes? A. Yes, that is done.

Q. It is similar to the process of drilling oil wells, is it not, mechanically? A. Yes. We did that by hand, with a very cheap drill rig, turned by hand; two or three workmen were turning it. And we only drilled to a depth of about, I think the maximum was about 25 meters. That is, let us say, about 80 or 90 feet.

Q. And you discussed this cheap hand labor drilling with Mr. Crittenden in his home in Nashville in 1938, did you not?

Oh, I am sorry. I have the city wrong. It is Shreveport. A. I explained to him, yes, that it was some old-fashioned drilling we did there, and it was not up to date.

Q. And did you not discuss with him the question
1355 of whether modern American oil well drilling apparatus might be brought from America and used for prospecting for bauxite? A. He suggested it. But the equipment was much too expensive. And oil drilling goes to much greater depths, than this shallow drilling for the minerals, you see.

Q. And you did go with him in Shreveport to inspect some drill rigs, did you not? A. Yes, I think we visited a place where they had some drill rigs for sale, very light ones. But even those were too heavy for this kind of work.

Q. So it did not seem to you feasible to import American drilling apparatus to carry on the Hungarian operation? A. I think it was too expensive.

Q. And is it not the fact that in the spring of 1938, in Shreveport, you asked or suggested to Crittenden that he come to Hungary in the summer of 1938 and inspect your operation? A. I rather doubt that, as he was much too busy in the refineries.

Q. Yes. A. And there was very little he could learn from an engineering standpoint.

Q. And is the man Somogyi to whom you referred, the man to whom you also referred in your letter which
1356 is Defendant's Exhibit 80, dated September 11, 1939? Do you see the name Somogyi? A. Yes. It says here that the mining authorities, the Hungarian mining authorities, wanted Dr. Somogyi.

Q. I see. This Somogyi is the same Somogyi is the man to whom you previous referred? A. You referred to him.

Q. Did you not identify him as an official or an employee of Transdanubia? A. I think he was for a very short while, upon the insistence of the Hungarian mining authorities. You see, in Hungary there is a regulation, if you mine, you have to have an official mining engineer, a classified mining engineer, classified by the Government, as supervisor of operations.

Q. The name of the corporation, Transdannbia, was Transdanubia Bauxit A. G., or "ah gay"? Is that right? A. Yes, sir.

Q. And that A. G. stands for the German word for corporation, does it not? A. It means stock corporation, yes.

Q. My point is, it is a German word. A. No. You see the letterhead, you see the Hungarian name, and underneath the German name.

Q. But the Hungarian equivalent of A. G. is R. T.,
1357 isn't it? A. I think so, yes.

Q. And the office of Transdanubia Bauxit was located at "V Bathory-utca 5", in Budapest? Is that right? A. I think that was; if I remember correctly, the home of von Krausz, or it was the address of Dr. Saluschinscy—one of the two.

Q. I show you what looks on its face to be a letterhead of Transdanubia Bauxit, and invite your attention to the address and ask you if that refreshes your recollection as to the address of Transdanubia Bauxit. A. I think that is either the address of Dr. Saluschinscy's office. Dr. Timar, the manager, was an associate—it was a firm of lawyers—Dr. Timar was the associate of Dr. Saluschinscy, and after the death of Dr. Saluschinscy, he took over, the law firm; he is a lawyer.

Q. At any rate, I am not asking you about the letter, but the letterhead. That is the letterhead of Transdanubia Bauxit? A. I think so, yes.

Mr. Burling: I now wish to offer in evidence a document merely to show the letterhead, and I do not offer in evidence at this time any part of the body of the document. (To Mr. Gallagher:) Do you wish to look at the letterhead (handing the letter)?

1358 Mr. Gallagher: That is all right. We have no objection to the letterhead.

(Accordingly, the letterhead portion of the paper identified as Defendant's Exhibit 90 was received in evidence.)

By Mr. Burling:

Q. So you do recognize Defendant's Exhibit 90 to be the letterhead of Transdanubia Bauxit? A. I think so, yes.

Q. Thank you. A. That was the custom in Hungary, because very few people spoke Hungarian.

Q. And that is why, is it not, that the name of the corporation is set out both in Hungarian and in German? A. Yes; that is where the two languages are used in Hungary.

Q. Now, going back to your testimony of last Friday, I believe that you stated you had sent the wire which is Defendant's 82. Did you not state that?

Did you not state that? A. State what?

Q. That you sent this wire. A. Yes, certainly.

Mr. Burling: I believe it can be stipulated by the parties that Defendant's 82 is a wire sent between September 16 and September 19, 1939, Your Honor.

1359 Mr. Gallagher: That is right.

By Mr. Burling:

Q. Defendant's 81-A was a letter to you from Giulini Brothers, dated September 16. A. That is not the letter the cable refers to.

Q. It is not? A. No.

Q. To what letter, in your opinion, does the— A. May I see the wire again?

Q. Yes. A. It is stated in the wire.

Q. The wire refers to Giulini's letter of September 16. A. Oh, yes; you are right, yes. That is a letter I rejected and I say I stick to my proposal of July 31.

Q. Yes. A. That is correct.

Q. In other words, Defendant's 81 is Giulini's letter to you. A. Yes.

Q. Defendant's 82 is your telegraphic reply to Giulini? A. Yes, in which I state—

Q. I am just trying to get this clear. A. In which I state—

Q. Thank you, Mr. von Opel. A. Yes.

1360 Q. Now, Giulini, in their letter to you, request you do that, to tackle with all your energy the resumption of production in the mines? A. Correct—and that is what I refused.

Q. Will you please do not volunteer.

If that is what they ask you, the answer is yes, and nothing more. A. Yes.

Q. And you replied—

"Your letter 16th September as before stand by my offer July 31 upon recent of order immediately ready to travel Budapest for purpose of starting production." A. Yes.

Q. Didn't you? A. Yes, that is correct.

Q. And your offer of July 31 was an offer to produce bauxite, was it not? A. Under certain conditions.

Q. At any rate you, shortly after September 16, 1939, indicated that you were ready to go to Budapest for the purpose of starting bauxite production, didn't you? A. Under the conditions that Mr. Koranyi would be—

Q. I don't care what the conditions were. If Mr. Gallagher wishes to ask you, he can.

You did say after September 16, you were ready

1361 to go to Budapest— A. Yes.

Q. —to produce bauxite? A. Yes.

Q. Thank you. By the way, when did Hungary join the Axis pact? A. I couldn't tell you that.

Q. It was before this date, at any rate, wasn't it? A. I don't think so, because if I remember correctly, in 1938 they were very close with Italy, and Germany was afraid

at this time that Italy jointly with Hungary would stop the conquest of Austria.

Mr. Gallagher: If Your Honor please, in order to try to speed things up, we have gone along with Mr. Burling on all this 1938 and 1939 situation, which we agree happened, that would be considered in the production of bauxite and so on. But we can't see where it has any materiality in this matter at all.

Mr. Burling: I would be glad to make a statement of what my theory is.

Mr. Gallagher: I wish you would.

Mr. Burling: The fact is, as we shall establish by the text, that Hungary at this time was a member of the Axis.

We shall further establish that Mr. von Opel well knew that the bauxite which was being produced in Hun-
1362 gary was going to the Giulinis, one of the principal fabricators of aluminum in Germany;

That he well knew that aluminum in Germany was then going to the Luftwaffe, the German Air Force.

We shall show that he continued his activities personally in the producing of bauxite, until just before he left, until three or four days before he left Europe.

We shall show at that time he had negotiated, himself, a contract to have Transdanubia continue to producing bauxite in ever increasing—well, in annually increasing amounts.

We shall show that Transdanubia did continue producing bauxite all during the war, which bauxite was going into the German war economy and the German Air Force.

And we shall show that it was the intention of Fritz von Opel that this happen.

Then at that point we will argue that since we show Uebersee and Fritz von Opel actively setting up the production of bauxite, through Uebersee's wholly owned sub-

sidiary, Transdanubia, that the burden is then upon the plaintiff to show that after December 6 that condition in some way stopped.

We concede that Fritz von Opel personally was not engaged in those activities, because he was in internment here during most of the war. But the question is not whether Fritz von Opel personally engaged in these activities. The question is whether Uebersee is an enemy, because it was doing business in an enemy country, enemy occupied territory.

Hungary, of course, was an enemy country. The production of bauxite is of course doing business. And we think that since we can show, we believe, that Transdanubia itself did produce bauxite; that Fritz von Opel contracted that it would produce bauxite during a term which lasted well into the war; when we show all of his activities before the war, before America entered the war, but after the European war was being waged, to cause bauxite to be produced to go to Germany, that the burden is on Uebersee Finanz-Korporation to show that pattern of doing business in Hungary ceased on December 6.

Mr. Gallagher: Now, Your Honor, we will positively show the Court that there was no business done by Uebersee or by Mr. von Opel, subsequent to May, 1941. We categorically state we will convince the Court of that fact.

But, for the moment, all this camouflage Mr. Burling has thrown into the case, with letters from the Giulinis, they are not letters Mr. von Opel wrote, but letters the Giulinis wrote to him in 1938 and 1939—and the war between Germany and England had broken out.

But the camouflage they throw around this case, because von Opel, in Switzerland, and a citizen of Liechtenstein, and a neutral corporation, was still engaged in mining bauxite—and very little came out, a few thousand

tons. But, regardless of what came out, they had
1364 the right to sell to England, like we were doing in this country, or to Germany, or elsewhere. It is only a camouflage, the whole thing. And we say, if this is going to continue, with documents, as to what transpired in 1939 and 1940, it is completely irrelevant.

The Court: The continuity may be important. I will permit it to be proved, and we will argue it at the end, when we will argue both sides.

Mr. Burling: Thank you, Your Honor.

I ask Your Honor, in the absence of some counter showing by my friends, to take judicial notice of what is set forth on page 474 of the World Almanac for 1947, as follows:

"Hungary joined (February 24, 1939) the Anti-Comminturn Pact, and signed (November 20, 1940) the German-Italian-Japanese Axis Pact.

"Hungary declared war on Russia June 27, 1941; on the United States and Great Britain, December 13, 1941."

Mr. Gallagher: We have no objection to Your Honor's taking judicial notice of the date that war was declared between Hungary and the United States. But when they joined the Axis Pact and all, we say, is completely irrelevant in this proceeding.

The Court: Let it go into the record, and I will hear your arguments on it at the end.

1365 Mr. Burling: I ask that a document, together with its translation, be marked Defendant's Exhibit 91 for identification.

(The documents referred to were marked for identification Defendant's Exhibits 91 and 91-A.)

By Mr. Burling:

Q. Now, Mr. von Opel, I show you a document of which Defendant's 91 is a photostat, and ask you if that is not the reply to your telegram which is Defendant's 90.

Mr. Gallagher: Your Honor, without repeating it any further at this time, do I understand the record should show that we have an objection to all this testimony with respect to 1939 and 1940, the years preceding the war?

The Court: Yes, you may have that understanding.

Mr. Gallagher: Thank you.

By Mr. Burling:

Q. You did receive this letter from Giulini, did you not? A. Yes, I think so.

Q. And that refers, again, to your leaving Zurich for Budapest, does it not? A. No; it only quotes my wire.

Q. And on October 4 Giulini again wrote you, confirming their earlier letter of the 19th, did they not?

Mr. Gallagher: What is the year, please?

1366 Mr. Burling: October 4, 1939.

By Mr. Burling:

Q. You recall receiving this letter, do you not? A. It is possible, yes.

Mr. Burling: I offer Defendant's Exhibit 92, which is a photostat of the letter which the witness has just examined.

1367 Q. You replied on October 28, 1939, did you not? I am showing you a document of which Defendant's Exhibit 93 is a photostat. A. Yes.

Q. And you say to Frick—and Frick, you said, was an official of Giulini, did you not? A. Yes, I think so.

Q. He was the head of the purchasing department, was he not? A. Yes.

Q. "Dear Mr. Frick: Since my trip to the United States is impossible at the present time, I intend to go to Hungary instead. I would be grateful to you, therefore, if

you would let me know what result the conference of your firm with the other two refineries has had. I intend to stay for several weeks in Hungary, beginning November 10, and would be pleased if on this occasion we could meet in Budapest. I remain, Sincerely yours, Fritz von Opel."

Did you intend to go to Hungary? A. I was invited by some friends to come to Hungary.

Q. For what purpose? A. For hunting.

Q. You were well enough to go to Hungary for hunting in November, 1939, but your broken leg prevented
1368 you from going to Liechtenstein the same month for the purpose of taking the oath of allegiance in the meantime? A. Because I had an accident in the meantime.

Q. What was the nature of that accident? A. I had slipped and the leg was rather soft yet, so I hurt it again.

Mr. Burling: I offer Defendant's 94 in evidence.

By Mr. Burling:

Q. I will ask you now to look at a document of which Defendant's Exhibit 94 is a photostat, and state whether or not that is a reply from Giulini from your letter of October 28, which bears the date of November 4, 1939. A. Yes.

Q. And this letter reads in part, does it not:

"It is therefore a fortunate coincidence because of your postponement of your trip to the United States you now intend to stay for several weeks in Hungary in order to be able to observe the development of the matter on the spot."

A. Yes; on the first, as you see by the heading, "Istvan Koronyi, Budapest," namely, "To the lawsuit in which we all were involved."

Q. It also refers, does it not, to the production of bauxite? A. Yes.

Q. When was this second accident to your leg, please? A. I think that happened after my return to Switzerland.

Q. After you returned to Switzerland from where? A. From Hungary.

Q. In other words, in the month of November, 1939, you did make a trip from Switzerland to Budapest? A. Yes.

Q. And that was for the purpose of speeding up production in your bauxite mine, was it not? A. I wouldn't say that.

Q. You did say that on November 10, 1939, did you not? A. No speeding up happened, Mr. Burling.

Q. I know, but the reason that you went from Switzerland to Hungary was to speed up production in your bauxite mine, was it not? A. The main purpose was to get this Koronyi matter settled, who was sitting on my neck since five years continuously defrauding me, and I had to pay all the public fees and wages and all other public charges.

Q. I show you a letter dated November 10, 1939, addressed to Walter E. Guyette of the Harvard Brewing Company, and ask you if you signed it. A. May I read the letter?

Q. Yes. (Pause) Have you read the letter? A. Yes.

Q. Did you sign it? A. Yes.

Q. Did you not tell Mr. Guyette on November 10, 1939, "I am now on the way to Hungary to speed up production in my bauxite mine, but I hope to be home in St. Moritz for Christmas"? A. Yes.

Q. Will you state whether or not it was not a fact that the purpose of your trip to Hungary was to speed up production in your bauxite mine? A. Yes, I thought it was possible to settle this Koronyi matter and start delivering bauxite to Switzerland.

Q. Delivering bauxite to Switzerland? A. Yes.

Q. You contracted to deliver bauxite to Germany on this occasion, did you not? A. I don't think that any large quantity was ever delivered, Mr. Burling.

Q. We will get through much faster if you will answer my questions. Did you not go to Hungary and enter in a contract to deliver bauxite to Germany? A. If you refresh my recollection.

Q. I will try to do that. Will you look at Defendant's Exhibit 96 and state whether that is not a letter dated 13 April 1940, which you wrote to Edgar Giulini in Ludwigshaven? A. Yes, I wrote this letter.

1371 Q. Will you look at the first sentence of the second paragraph. It reads, does it not: "Although our agreement clearly provides that we will pay these overdue fees, one half share each, I thought it nevertheless correct to advise you of the matter and to obtain your consent to the payment." What agreement were you referring to? A. I don't recollect that. If you show me the agreement.

Q. I will show you the agreement. I show you a letter dated March 10, 1940, addressed to Giulini, and signed Krausz and Timar, and ask you if that is not an agreement which you negotiated with Giulini brothers in Budapest. A. Yes, it is an agreement.

Q. And you negotiated in Budapest, did you not? A. An agreement, I should say, with a loophole.

Q. Whether or not it has a loophole, you negotiated it in Budapest? A. Yes.

Q. When did you do that? A. That must have been in the fall of '39.

Q. You recognize the signatures of Krausz and Timar, do you not? A. Yes, I do.

Q. And they appear on the third page of this document? A. Yes.

1372 Q. Written right under the stamp "Transdanubia Bauxite," and the Hungarian word for incorporated, is that correct? A. I don't know whether that is the word. I presume so. I don't speak Hungarian.

Q. This agreement provides, does it not, that Transdanubia undertakes to ship to Giulini at Ludwigshafen 100,000 tons of bauxite at a basic price of 10 R. M. f.o.b. car, and then at Suemeg, or Zalahalep stations. Those stations were where the mines were, is that right? A. Oh, no, they are stations on the River Danube.

Q. And then there is some more Hungarian geographical terminology:

"Shipment to be made from the 'Margot I-IV' and 'Edgar' mines, one-half of which is owned by you, one half by Mr. Lucovnik, engineer, and subject to the following conditions."

Then there is a paragraph on quality, a paragraph on discount, a paragraph on price, a paragraph on payment, and then the following:

"Shipments: Shipment of the 100,000 tons of bauxite shall be started in the spring of 1940 as soon as weather conditions permit. You undertake, to delive not less than 25,000 tons during the year 1940, another 35,000 tons during the year 1941, and the balance during the year 1942."

That would be 40,000 tons of bauxite in 1942, would it not? A. You just read it. Would you also read the next paragraph.

1373

Q. I would be glad to go on reading:

"The obligation to make shipments terminates if bauxite of the agreed quality shall no longer be available in the mentioned mines in quantities which make mining commercially feasible, and if future shipments from other mines shall not be possible."

Do you want me to go on? A. No, that is sufficient.

Q. Did you negotiate such an agreement in 1939 with Giulini, or Giulini's representatives? A. I think Timar and Krausz made all those stipulations.

Q. I want to invite your attention to the first sentence of this document:

"On the basis of negotiations conducted by your Mr. Fritz von Opel, on the one hand, and by our attorney-in-fact, Dr. Georg Ballay, attorney at law in Budapest, we confirm the fact that we concluded with you the following supply contract."

Does that refresh your recollection that you negotiated this? A. Yes, together with those men, because those technical details and prices, and so on, I did not know,
1374 but I certainly was present.

Mr. Burling: If Your Honor please, I apparently omitted to offer certain documents. I now offer Defendant's 90 through 97, inclusive.

Mr. Gallagher: Our objections are the same as to all this line.

(Accordingly, the documents above referred to were marked Defendant's Exhibits 90 through 97, inclusive, and received in evidence.)

Mr. Gallagher: Your Honor, I wonder if we could have a five-minute recess.

The Court: We will take a five-minute recess.

(Accordingly, a short recess was taken.)

By Mr. Burling:

Q. Will you look again at Defendant's Exhibit 96, which is the letter of April 13, 1940, from you to Giulini. This letter concludes, does it not: "If I can render you any service in the United States in business or private matters, I shall of course be glad to do so." A. Yes, that is correct.

Q. Did you ever render Edgar Giulini any service in the United States? A. No, neither private nor in a business way.

Q. You state, do you not—and I am reading from the last sentence of the first paragraph on page 2 of the
1375 English translation—"Of course, I share your opinion that, within a few weeks, the entire dealings will run smoothly so that, in the long run, both of us, as I hope, will derive pleasure from our business association." A. Yes, that is correct.

Q. And then you go on to say, do you not: "On April 16 I am leaving on the Conte de Savoia for the United States where you can reach me, if necessary, at the address set forth below." A. Yes, that is correct.

Q. And then you set forth the address of your accountant, Bayer and Clauson. A. Yes.

Q. You meant by that letter, did you not, that at the time you were leaving for America you expected your bauxite problems to straighten themselves out so that thereafter you and Giulini would have a pleasant business association. A. Yes, that is expressed in the letter.

Q. And that is what you meant to say, is it not? A. You always have to take those remarks with a grain of salt.

Q. But is it not the fact that just before you left for America you expected Transdanubia to start functioning smoothly? A. No, I was not willing to put any
1376 money into it. I thought within a very short time they would come to a stoppage.

Q. You thought that Transdanubia would come to a stop, and at the same time you wrote to Giulini, "Of course I share your opinion that within a few weeks the entire dealings will run smoothly so that in the long run both of us, as I hope, will derive pleasure from our business association"? A. You must refer to this remark in the contract. There is what I call the loophole in this contract.

I already knew at this time that it was rather doubtful whether we ever would make big deliveries.

Q. What was the purpose, then, of entering into the contract to deliver a hundred thousand tons of bauxite, and writing this letter to Edgar Giulini? A. Because I wanted to get Mr. Koronyi off my neck.

Q. That is why you contracted to deliver a hundred thousand tons of bauxite? A. Under certain conditions.

Q. Koronyi was already off your neck at the time you wrote this letter, was he not? A. The situation was rather unclear, because Giulini had failed to really put Koronyi out of circulation. He still had some say in the matter.

Q. Hadn't he gone bankrupt in 1939? A. He was in difficulties, but Giulini failed to really finish the man.

1377 Q. Didn't Koronyi go bankrupt in '39? A. I think he personally went bankrupt, but these 50 per cent were not kept on his name but on the name, I think, of a relative of his. And this part, I think, that was the reason that Giulini could not get hold of him.

Q. Is it not true that on November 4, 1939, Giulini had written you as follows: "A substantial change in the situation, however, has occurred as a result of the bankruptcy of Koronyi, which we assume is now under you." I am reading from Defendant's Exhibit 94. A. That is what I thought at the time, but I think those 50 per cent mining rights were not on Koronyi's name, that was the reason the Giulini couldn't get repaid.

Q. Prior to April 13, 1946, you had frequent occasion to receive letters from Edgar Giulini, did you not? A. Yes.

Q. And you also received letters from Mr. Frick, did you not? A. Yes with always under the heading Koronyi.

Q. Wait a minute. Did you not receive letters from Frick of Giulini Brothers? A. Yes.

Q. I did not ask you a thing about the heading, did I?

A. No, I just wanted to refresh my recollection whether you were talking about those letters.

1378 Q. I am talking about letters which you received signed Edgar Giulini, or signed Frick. A. Which letters, what date?

Q. Did you not receive such letters? A. I received several letters.

Q. That is what I wanted to know, thank you. And you recognized the signature of Frick and Giulini, do you not? A. Yes, I think so.

Q. Now, Mr. von Opel, I show you a document entitled "Aide Memoire," which is Government's Exhibit 98, and ask you if you do not recognize the signatures of the four men who signed that document. The first signature is that of Edgar Giulini, is it not? A. I don't recognize it, but it is possible.

Q. And the second signature is that of Heinrich Frick, is it not? A. That is possible.

Q. At any rate, you recognize the signature of Georg von Krausz, do you not? A. Yes.

Q. And von Krausz had what position with Transdanubia? A. He was one of the managers jointly with Dr. Timar.

Q. Will you examine this document and see if it is not an aide memoire, or record of a conference held in the office of an attorney in which the parties were Trans-

1379 danubia and Giulini? A. Yes, that is correct.

Q. And it records an agreement entered into, does it not? A. Yes.

Q. Between Giulini and Transdanubia? A. Yes, apparently.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: Same objection that runs to all of these.

(Accordingly, the document above referred to was marked Defendant's Exhibit 98 and received in evidence.)

The Witness: This contract runs for three months.

By Mr. Burling:

Q. Did I ask you that? A. No.

Q. Haven't I asked you fifty times not to volunteer? A. Pardon me.

Q. You have lawyers, have you not, in this courtroom? A. Yes.

Q. And you know they will have a chance to ask you questions after I finish. A. I beg your pardon.

Q. I show you Defendant's Exhibit 90-A, which you have previously identified as being the letterhead of Transdanubia; state, if you will, whether the signature on
1380 the right hand—there are two signatures—the right hand signature is not that of Dr. Timar. A. Yes, I guess it is.

Q. And that is written under the stamp, Transdanubia Bauxit, Aktiengesellschaft, is that right? A. Yes.

Mr. Burling: I offer it in evidence. If Your Honor please, this is dated February 4, 1942, and refers to shipments of bauxite to Giulini Brothers from Transdanubia

Mr. Gallagher: Are you offering it?

Mr. Burling: Yes. I said I offer it in evidence.

Mr. Gallagher: Your Honor, we object very strenuously to this unless Mr. Burling can tie it in in some wise with Uebersee or Mr. von Opel. As the proof further will show, in our case neither Uebersee nor this witness, Mr. von Opel, had anything further to do with Transdanubia, as far as directing its operations or otherwise. As we will further prove to the best of the belief of this witness and of the corporation the mines had been leased in '41.

This exhibit, which Mr. Burling is now offering, purports to relate what was being done by Transdanubia with Giulini subsequent to that time. We feel convinced that

it is completely irrelevant, and further that it is really incompetent to point the situation up. It would be similar to one in which an American corporation, or cor-
1381 poration of another neutral, having a subsidiary in a country which became an enemy or ally of enemy, that the subsidiary acting on itself without directions from the parent company, or the subsidiary having leased its properties to a third party, and they being operated by a third party, in no wise goes to show that the parent corporation, or the holding company, or Mr. von Opel in any wise directed, aided, assisted, conducted or operated mines in the production of bauxite, and until Mr. Burling can tie this exhibit, Defendant's 90, into Uebersee or Mr. von Opel, then we feel that it is clearly objectionable.

The Court: I understood, and over your objection I have been admitting all of this testimony with regard to this transaction subject to its being connected up at least to the extent that it may give rise to a presumption of continuendo. Now, if it does not, you can move to strike it out at the end of the case, and you can argue that as part of your argument. I have to take these things provisionally, subject to their significance being shown at a later time.

(Accordingly, Defendant's Exhibit 90, having previously been received in evidence for a limited purpose heretofore specified, was received in evidence in its entirety.)

By Mr. Burling:

Q. In any event, this document, 90-A, is signed by one of the managers of Transdanubia? A. Yes, that is signed by Dr. Timar.

1382 Q. Have you any reason to believe, Mr. von Opel, that at any time prior to V-E day Uebersee sold or otherwise divested itself of its ownership of Transdanubia? A. Yes, sir, I have.

Q. What is that reason? A. I got lengthy report about the situation in Hungary in a letter dated March, '41.

Q. And that said what? A. I am coming to it. In addition to this letter I got numerous communi—

Q. I ask you what that letter said, please.

Mr. Gallagher: We have the letter, do you want to offer it?

Mr. Burling: No, I don't want to offer it. I want to see it.

Mr. Gallagher: You will see it at the proper time.

Mr. Burling: I now want to know from Mr. von Opel what the contents of the letter were, if you refuse to give it to me.

The Witness: You want to know the contents of the letter?

By Mr. Burling:

Q. Yes. A. The managers begged me to invest capital in the mine because they had run completely out of money.

They had produced very little because the surface
1383 production was exhausted, and they suggested, and implored me to invest about 50,000 pengos so the deep mining could be started. I refused, and even previously, prior to this letter, and they told me in this letter that it would be deplorable if I would give up the corporation, and the implored me for the favor of the corporation, and they implored me for the favor of the cor- so that the mine could be opened.

Q. Yes. A. I refused that, and I wired both managers of the corporation that I would not invest any money, and they should get rid of the entire investment either by selling it or by leasing it in any way they saw fit.

Q. Yes? A. That is about all.

Q. This was a communication addressed to Transdanubia, is that right? A. Yes, sir.

Q. My question, which I don't believe you answered— A. Pardon me, it was, that the gist of the letter Transdanubia wrote me, and it also shows my prior orders to them, and after I received the letter I immediately got in contact with them by wire.

Q. With whom by wire? A. With Transdanubia.

Q. But my question was, which you did not an-
1384 swer: Have you any basis for belief that Uebersee Finan. Korporation, prior to 1945, prior to V-E Day, ever divested itself of its hundred per cent ownership of the shares of Transdanubia.

Mr. Gallagher: Your Honor, we submit that that has nothing to do with the situation—no, even if the question were that they retained their ownership, it would not constitute doing business to own stock, a hundred per cent owned in a subsidiary. I want to clarify that point at this time.

Mr. Burling: Your Honor, is that not a point for argument, after we know what we are fighting about?

Mr. Gallagher: I want to clarify the point at this time before we continue.

The Court: I have gotten your point. I will hear you on the matter.

By Mr. Burling:

Q. You know that Uebersee did by a series of transactions continue to extend a guarantee to Transdanubia through the year 1942, do you not? A. There was a guarantee given of altogether seven or eight thousand dollars.

Q. And that was extended in the year 1942 by Transdanubia, was it not? A. No, it was not extended. Transdanubia had received a loan from a Swiss bank through a Budapest bank.

Q. And the Swiss bank was guaranteed by Ueber-
1385 see through Adler, is that not right? A. Definitely.

Q. And is it not right that that arrangement was continued, that Henggeler took steps on behalf of Uebersee in the calendar year 1942 to continue that arrangement? A. You entirely—

Q. Is it true or not? A. No, not in the way you say it. It was different. We had—

Q. Haven't you previously testified, Mr. von Opel, to the effect that that guarantee was extended in 1942?

Mr. Gallagher: If it will serve any useful purpose, Mr. Burling, we are willing to stipulate that during the period of '41 and '42, until the collateral was returned by a Swiss bank which it had been posted with, which in turn serves as a guarantee to a Swiss branch in Hungary, who in turn gave a guarantee to a Hungarian bank, who in turn made a loan to Transdanubia bank in '40, we will stipulate that when the bank advised Uebersee, and in three-month periods during '41 and '42 until the collateral was released, that Mr. Henggeler agreed that the collateral stay posted, we will stipulate that.

The Court: There are some documents here on it, as I remember.

Mr. Gallagher: We will stipulate that that is the
1386 fact.

Mr. Burling: I do not by my silence mean to agree that that is the fact. I think Henggeler requested, not agreed.

As to these original documents which are now being marked, if Your Honor please, we are under an agreement to return the originals to Giulini Brothers, and we therefore request a stipulation that we may withdraw the originals and substitute photostats for the record.

Mr. Gallagher: We have no objection that that, Your Honor. We would like a statement from Mr. Burling as

to where the documents have been returned; as a matter of fact, they have been obtained from Mr. Giulini himself, his files?

Mr. Burling: Giulini Brothers.

Mr. Gallagher: Do we understand that neither of the brothers are going to be witnesses? One is dead, I believe.

Mr. Burling: Edgar Giulini is dead, I can't call him.

Mr. Gallagher: Is the other going to be a witness?

Mr. Burling: I don't believe so.

By Mr. Burling:

Q. I show you Government's Exhibit 99-A for identification and ask you if you can identify the stamp signature. Is it not Transdanubia Bauxit, Aktiengesellschaft? A. Yes.

Q. And the date of this letter is April 15, 1942, is it not?

A. Yes.

1387 Q. And is it not the fact that the signature on the right-hand side of the two signatures is that of Georg von Kraasz? A. I guess it is.

Q. Thank you.

Mr. Burling: I offer it in evidence. Your Honor, this refers to the shipment of bauxite dated April 15, 1942.

(Accordingly, the document above referred to was marked Defendant's Exhibit 99 and received in evidence.)

By Mr. Burling:

Q. I show you Defendant's Exhibit 100-A for identification, and ask you if it is not the fact that the signature, that the stamped signature is Transdanubia Bauxit Aktiengesellschaft, and that the right-hand of the two signa-

tures is that of Georg von Krausz. A. I am not so sure. It is very badly written. It might be. It starts with a "K".

Q. And is not the fact that the left-hand signature is that of Somogyi? A. I couldn't read it. I never saw the signature.

Mr. Burling: I offer this in evidence.

(Accordingly, the document above referred to was marked Defendant's Exhibit 100 received in evidence.)

1388 Mr. Burling: Your Honor, this letter to Giulini Brothers, dated April 20, 1942, reads:

"We have the honor of submitting to you herewith photostat of the official certificate concerning the analysis prepared by the Royal Hungarian Geological Institute of the 532,700 killograms of bauxite shipped by us in January of this year. Very truly yours, Transdanubia Bauxit, Aktiengesellschaft."

By Mr. Burling:

Q. I ask you to examine, Mr. von Opel, Defendant's Exhibit 101-A, on the letterhead of Transdanubia, and ask you if it does not bear the rubber stamp signature of Transdanubia, and if the signature on the left-hand is not that of Krausz. A. It looks to me like his signature.

Mr. Burling: This, if Your Honor please, refers to bauxite shipped "by us in the month of April, 1942."

(The document above referred to was marked Defendant's Exhibit 101 and received in evidence.)

By Mr. Burling:

Q. I show you Defendant's 102-A, and ask you if that is not a document written on the letterhead of Trans-

danubia, addressed to Giulini Brothers, dated October 30, 1942. Is not the signature on the right hand of that Krausz, and on the left hand that of Somogyi? A.
1389 I can see on the right-hand side a "k". He writes very badly. But it might be Krausz.

Q. And it bears the rubber stamp, Transdanubia Bauxit? A. Yes, I can read that.

Mr. Burling: Without reading the letter in detail, Your Honor, this again relates to bauxite production and shipments in July, 1942.

(The document above referred to was marked Defendant's Exhibit 102 and received in evidence.)

By Mr. Burling:

Q. Will you now examine Defendant's 103-A and state whether that is not written on the letterhead of Transdanubia, and has the rubber stamp signature of Transdanubia? A. Yes.

Q. And is it not dated March 18, 1943? A. Yes, it is.

Q. And addressed to Giulini Brothers? A. Yes.

Q. Is it not true that the signature on the right is that of Timar? A. Apparently.

Mr. Burling: I offer this, also. Your Honor, I would like to point out the second paragraph, which reads:

"Pursuant to negotiations carried on on October 13 and 14 in the office of Dr. Georg Ballay, Budapest, the
1390 following was agreed between you as lessee and us as lessor in partial amendment of the lease of March, 1940, and the subsequent agreements made."

By Mr. Burling:

Q. Mr. von Opel, does that refresh your recollection as to whether Transdanubia was the lessee or lessor of min-

ing properties in 1940? A. The last I heard was this letter of sales of March, '41. This letter is entirely new to me. But if you let me read it, I might be able to interpret it.

Q. Does that letter not refer to Transdanubia as being the lessee? A. Yes, apparently.

Q. Have you any explanation of that? A. No, I have not.

Q. I show you a letter which is Defendant's 104-A, and ask you if that is not on the letterhead of Transdanubia, bearing the signature stamp of Transdanubia, and signed by Krausz. A. It looks to me like his signature.

Q. The one on the right? A. Yes.

Q. And this bears a receipt stamp of June, 1944, does it not? A. June 6, 1944, yes. There must be—it says 1391 here, 1924, apparently a typographical error.

Q. The Giulini receipt stamp is June 6, 1944? A. Yes.

Q. And that refers to production of bauxite in the month of February, does it not? A. And to the chemical analysis, yes.

Mr. Burling: That is all.

Mr. Gallagher: Your Honor, I might point out in the record in the pre-trial conference, and in Defendant's contentions, and so forth, the time during which all this doing business was alleged by the Defendant to have taken place was in the period from the 'thirties up to '42. It seems to me we are now getting further afield all the time. They themselves so stated in the pre-trial statement.

Mr. Burling: My friend, I think, is mistaken as to what our statement was. We agreed that as a legal conclusion it does not matter what—I withdraw my statement.

What we were trying to do was to bring it up to the date of vesting, and I am told—I did not take part in the pre-trial conference—that what was said was at least until the date my friend referred to.

Mr. Gallagher: No, it does not say that, Mr. Burling.

Mr. Burling: In view of the fact that my friend has deviated extensively—

Mr. Gallagher: It states right in the pre-trial proceedings, signed and taken before Judge Holtz-

1392 off, and signed by both parties, "Defendant claims that the plaintiff corporation was doing business in an enemy country, to wit, Hungary, from the middle 'thirties to 1942."

It seems to me we are getting further and further afield, and wasting more and more time on this thing.

Mr. Burling: Perhaps I could save time if I said I have come to the end of this line of proof.

Mr. Gallagher: Did the defendant sign this stipulation?

Mr. Burling: You swore to some interrogatories, too, that neither Fritz von Opel—

The Court: Gentlemen, let's try to get along with the testimony. I will give you an abundance of time to argue the case.

Mr. Burling: I am coming now, if Your Honor please, to a wholly different line of questioning, it has nothing to do with bauxite at all.

By Mr. Burling:

Q. Did you ever have occasion to talk to Mason Houghland on the transatlantic telephone? A. I don't remember that. If you refresh my recollection as to the date and time.

Mr. Burling: I believe I forgot to formally offer 103 and 104. I now do so.

1393 (Accordingly, the documents referred to were received in evidence as Defendant's Exhibits 103 and 104.)

By Mr. Burling:

Q. Shortly after—that is, within a week after September 18, 1939—did you have such a conversation with Mason Houghland? The week following September 18, 1939? A. Do you mean a transatlantic call?

Q. Yes, I do. A. Between Switzerland and America?

Q. That is true. I will try to help you out. Were you staying at the Dolder Grand or Grand Dolder Hotel in Zurich? A. At this time, yes.

Q. And did you not receive a call from Houghland, who was in America? A. It is possible, I don't recollect it.

Q. Will you look at Defendant's Exhibit 105 and see if that is not a wire which you sent to Houghland on September 18, 1939? A. Oh, yes, I remember this wire.

Mr. Burling: I offer—

Mr. Gallagher: Just a moment, let us get a look at it, Mr. Burling. We don't have a copy.

Mr. Burling: I don't understand counsel's concern with a cable your witness says he sent.

1394 Mr. Gallagher: I am still asking to be permitted to see an exhibit before you offer it.

(The document was handed to Mr. Gallagher.)

Mr. Gallagher: No objection.

Mr. Burling: I now offer it.

(Accordingly, the document above referred to was marked Defendant's Exhibit 105, and received in evidence.)

By Mr. Burling:

Q. This telegram is addressed, Mason Houghland, care of Spur Distributing Company; signed, Fritz, Doldergrand, Zurich:

"Overseas Investors intend selling participation to meet other obligations What I personally deeply regret Please communicate Ulrich Shreveport who is informed accordingly Intend to sail soon possible. Regards Fritz."

You sent this? A. Yes, I did.

Q. Who were the overseas investors who intended to sell a participation? A. At the time, as you know, the overseas stock was owned by about 15 different people, and I certainly after this set-up has cost me $50,000 to maintain, just for such a purpose, I certainly on a trans-

atlantic wire didn't say that I was the one who
1395 owned it.

Q. When you refer to some 15 owners, you are referring to this transaction that Dr. Frankenberg told us about yesterday? A. Yes, sir.

Q. The transaction which you heard me characterize as a fraudulent transaction. I am not asking you to agree with it, but we are talking about the same thing, are we? A. If you talk about a fraudulent transaction, we certainly don't talk about the same thing.

Q. Well, the one which I characterize in questioning Frankenberg— A. Perfectly wrongly.

Q. Perhaps so, but it is the same transaction, at any rate. A. It was a full legitimate sale.

Q. We will come to that. That is what we are talking about, is it? A. Yes.

Q. When you say that it cost you some $50,000, this transaction also saved you hundreds of thousands of dollars in personal holding company taxes, did it not? A. You are entirely mistaken.

Q. Finally, the Government caught up with you in 1941, but before that you thought you were saving hun-
1396 dreds of thousands of dollars in personal holding company taxes. A. How could I?

Q. Did you not? A. No.

Q. In 1939 you had not filed a personal holding company return for '36, '37, or '38, had you? A. Let me explain this whole matter a little bit more.

Q. Will you just answer my question, and then you can explain with Mr. Gallagher. A. What was your question?

Q. In 1939, the day you sent this telegram, Overseas or Uebersee, had not filed, and you had not filed, a personal holding company tax return for any year since 1935, had you? A. I don't know—nothing about the matter. This matter was attended to by the accountants and Dr. Henggeler.

Q. Don't you know that no personal holding company tax return had been filed for those years? A. That is perfectly possible, but you—

Q. All right, thank you. The fact is, is it not, that these Swiss nationals that the Union Bank of Switzerland found, executed proxies to vote the shares as instructed by Frima, is that not right? A. That is possible.

Q. Is it not right? A. I couldn't tell you, I think they did that.

1397 Q. So they had no power to direct the investment of Overseas at all, personally, did they? A. No, this whole transaction was an escrow agreement.

Q. Were proxies to vote the shares or agreements to vote the shares running to Frima? Is that not right? A. That is possible, I don't remember this detail.

Q. You do not think that the Swiss nationals had any power to vote the shares in accordance with their choice, do you? A. I don't think so, no.

Q. I don't either. So when you said that Overseas investors intend selling—and by the way, the participation you referred to here is, you mean, the Spur stock held by Uebersee, do you not? Well, Hougland was the president of Spur, was he not? A. Yes.

Q. And you were not cabling him about something else, were you? A. I think he intended to buy the spur stock.

Q. But you understood that Overseas investors intend selling participation to mean other obligations? You meant

they intended to sell Spur Distributing, is that not right? A. That is possible. At this time we were rather—

Q. Is that not what you meant, don't you know? A. It is not said in the cable.

1398 Q. I said, is that not what you meant, sir. A. I don't remember that. If you show me Mr. Houghland's cable, I can tell you, we can fit it together.

Q. Did Mr. Houghland cable you or did he telephone you? A. I couldn't tell you. Anyhow, we were in a rather unliquid position, and the creditors of Overseas, who had advanced me quite a lot of money, told me I should get in a liquid position.

Q. What you were talking about selling was Spur and not some other stock, is that not right? A. It was never my intention to sell Spur, because it was a very good investment, but Mr. Houghland made suggestions, and if he had offered a fair price, we might have accepted it.

Q. Did you not cable him on the 18th, "Overseas investors intend selling the participation to meet other obligations What I personally regret"? Will you explain why you said that you deeply regret its doing something with respect to the Spur stock? A. Because I didn't want to indicate to him my financial situation.

Q. In other words, this cable was deliberately misleading, was it not? A. If you call that deliberately misleading, Mr. Burling, then the whole business life is deliberately misleading, all day long.

1399 Q. Your experience in business life is that people customarily lie to one another, is that right? A. Not at all, you see, but if you—

Q. Did you not lie to Mason Houghland when you told him that Overseas investors intended selling the participation, and that you personally regretted it? A. Do you think I should have told him that I—

Q. Did you not lie to him, I said. A. No, that is not a lie.

Q. Is it not a lie to tell him something that is contrary to the truth? A. Mr. Burling, do you really—if you deal—

Q. Will you answer my question, sir. A. I can't answer it this way.

Q. Do you know the difference between truth and falsehood? A. I think I know that very well, Mr. Burling.

Q. Was this cable true or false? A. If you want to sell—

Q. Was it true or false? A. How shall I explain it?

Q. Is it true or false? A. I can't answer this question.

Q. Can you answer any question truthfully? A. I think so, I try to do that all the time.

1400 Q. Have you in the courtroom? A. I try to do that all the time.

M. Ingoldsby: I object to this continued argument.

The Court: Sustained. We will adjourn until two o'clock.

(The noon recess was accordingly taken at 12:30 p.m. until 2 p.m.)

* * * * * *

1402 Fritz von Orel, resumed the witness stand on behalf of the plaintiff and, being previously duly sworn, testified further as follows:

Cross Examination (Resumed)

By Mr. Burling:

Q. Now, during the noon recess have you been able to refresh your recollection that shortly after September 18, 1939, you received a trans-Atlantic telephone call from Mr. Houghland concerning the possibility that the Spur shares would be sold? A. I don't recollect this call, but it is possible that he called me.

Q. Didn't Mr. Houghland say to you that he was very surprised because he thought you were enthusiastic
1403 about the Spur shares? A. That is possible.

Q. And didn't you say to him that you agreed and regretted the decision to sell and, in fact, had done everything you could to prevent the sale? A. No, that is not quite a correct statement.

Q. In fact, didn't you tell Mr. Houghland that your father insisted upon the sale and that you could do nothing to change his mind? A. My father had nothing to do with the matter.

Q. Whether he did or not, isn't that what you told Mr. Houghland? A. No; definitely not.

Q. You are sure of that? A. Definitely. That would be fully inconsistent with my wire to Mr. Houghland.

Q. Your wire didn't correctly state the fact, did it? A. Yes.

Q. Did it? I thought you agreed that you could not say whether the wire was true or false before lunch? A. I can say this way, Mr. Burling. As you know, I was in an unliquid position, and if you want to deal with someone, you don't disclose your weak position.

Q. But the wire says investors who intended
1404 selling Spur stock? A. No.

Q. Your wire says practically that, doesn't it? A. Investors. It might have been better to say creditors.

Q. What creditors are you talking about? A. I am talking about those people who lent me money.

Q. Who were they? A. For instance, the Adler Bank. I owed money to the Adler Bank and the Nashville Bank. I owed money in Shreveport.

Q. Did they insist you sell the Spur stock? A. No, they didn't insist on selling the Spur stock. They told me to get into liquid position.

There was no special sale in their mind. They wanted me to get out of unliquid position. I didn't sell Spur but some other property.

Q. What did you sell? A. Some oil property.

Q. As a matter of fact, the oil properties were in bankruptcy at this time, weren't they? A. Oh, no.

Q. No? A. No, no; you are mistaken.

Q. Weren't your oil properties consolidated in
1405 Hurricane Oil Refinery? A. That was the refinery I had there.

Q. That is where your oil lands and oil wells were, too? A. Oh, no.

Q. Nothing went into Hurricane except the refineries; is that your testimony? A. If I remember, Hurricane was—I don't know whether anything was consolidated into it. As far as I remember, only the Shreveport properties went into it.

Q. And the Nashville Bank loan wasn't made until 1940, was it? A. I think there was a loan against the collateral of—you are speaking about Nashville?

Q. You said that the Nashville Bank requested you to get in a liquid position in September, '39.

I asked you if it wasn't true that you borrowed money from the Nashville Bank in '40? A. That is possible; yes.

I had borrowed money from the Adler Bank, and I think also in '39, because it has been years ago, and I think I already had borrowed $200,000 from the bank in Shreveport.

Q. But you referred a moment ago to a Nashville bank. That was in error, you realize that? A. That is in error; yes.

I was in unliquid position at that time.

1406 Q. Didn't you state to Houghland on the phone, shortly after September 18, 1939, that although you had some say in Overseas management, the real control and management was our father's? A. I never made such statement.

Q. You are sure of that? A. Definitely.

Q. Didn't you also state that your father had directed Frankenberg to sell the Spur stock? A. I never made such statement.

Q. You are sure of that? A. Definitely.

Q. Didn't you tell Mr. Houghland on the trans-Atlantic phone that you were trying to get your father to agree to give him an option on the stock for a short period? A. No; I never made such statement.

Q. Didn't you agree— A. (Interposing) And by the way, Mr. Houghland had an option. He had a right of refusal since '32 and '33.

Q. A right of first refusal, is that the same thing as an option? A. What do you mean by option?

Q. I don't know. What do you mean? You used the word. A. You asked me about option.

1407 Q. So I did. I am wrong.

Don't you know what an option is, Mr. von Opel? A. An option gives somebody some rights to exercise or not exercise.

Q. At a fixed price? Isn't there a difference between a right of first refusal and option? A. I think it is.

Q. Now, do you recall telling Mr. Worthington in the course of the New York interrogation, and I am reading from page 84, and I am now back to the same proposed sale of Spur stock in September of '39:

"As I recollect, it was Dr. Frankenberg who said: Wouldn't it be wise to get into a better cash position and sell one of the properties, but we never pressed the matter and nothing came out of it"?

A. That is possible. I told you the Adler Bank had given me some loans, and Dr. Frankenberg was advising me financially.

Q. So Dr. Frankenberg was pressing you to sell the Spur stock? A. You can't say pressing.

Q. But he was pressing you to sell the stock? A. No, not pressing.

Q. Well, he was insisting? A. He was only concerned with Spur, with my liquid or cash position, so to
1408 say.

Q. Didn't you tell him that you agreed to give Houghland an option on the Spur stock at this time? A. That is possible. I can't recollect the details. I think Mr. Houghland wanted an option.

Q. How did you learn he wanted an option? A. He must have wired me.

Q. How do you know he must have wired you? How do you know he didn't telephone? A. Because usually I didn't telephone.

Q. Don't you know, Mr. von Opel, that the long distance telephone records from your Palm Beach house in Florida show you made 105 long distance calls in the six-month period ending in May, 1941?

Mr. Gallagher: Do I understand you mean trans-Atlantic calls?

Mr. Burling: Long distance.

Mr. Gallagher: There is a big difference. I wish you would clarify that as to which you are discussing.

By Mr. Burling:

Q. In the six-month period ending May, '41, didn't you make 12 trans-Atlantic phone calls? A. Trans-Atlantic phone calls?

Q. Yes. A. I don't recollect that.

1409 Q. Didn't you make calls to Wiesbaden, Budapest, Zurich, and London? A. That is entirely out of my mind, and I rather doubt that very much, because normally I don't use the trans-Atlantic telephone because you could communicate much cheaper by wire or cable.

Q. Did you have a cable from Mr. Houghland in which he asked for an option? A. About which time are you speaking now?

Q. September, '39, sir. A. Well, in between you spoke about Palm Beach.

Q. That was with reference to your habit of using the trans-Atlantic telephone.

I am going back now to September, '39. A. You want to know in which Mr. Houghland communicated with me?

Q. That is right. A. I don't remember.

Q. Are you certain he didn't talk to you on the trans-Atlantic phone? A. I never said it was perfectly certain.

Q. Are you now? A. It is possible but I am sure I didn't call him.

Q. Mr. von Opel, it is unnecessary to waste so much time every day in discussion.

1410 I have asked you: Don't you remember that he called you? A. I told you I don't remember.

Q. Now, was it your intention to sell Spur stock? A. No. I considered it a very good property and I wanted to keep it.

Q. Why did you send the wire to Mr. Houghland then, Defendant's 105? A. Because if Mr. Houghland would have made a good offer, I might have sold Spur.

Q. That does not invite an offer from Mr. Houghland to sell Spur? A. No. Mr. Houghland wanted to buy it, you see, and I indicated to him that I would be willing.

Q. You think Mr. Houghland indicated to you before you sent the wire that he wanted to buy the stock; is that your testimony? A. I don't recollect these details. I only—

Q. (Interposing): That is not just a detail. Isn't it important whether you tried to sell the stock or Houghland first tried to buy it? A. I think it started—I am not sure about the detail, but I think it started with Mr. Houghland expressing the wish to buy.

Q. You think first Mr. Houghland expressed the

1411 wish to buy and then you sent the wire to him; is that your testimony? A. I am not sure about this detail.

Q. Is it your best recollection that that is the way it was? I understand you are not sure. What is your best recollection? A. It is so long time ago and nothing came out of it, I really don't remember it.

Q. You have been interrogated about this time and time again? A. About the wires?

Q. Yes. A. This one wire I was shown in '46 in New York.

Q. And you have tried to recall this transaction, have you not? A. I cannot recall.

Q. You don't know whether Mr. Houghland first communicated with you or you sent a wire? You don't know which was first? A. No, I don't.

Q. And you have no opinion as to which is more likely? A. No, I could not tell you.

Q. Now, in 1941, you saw Mr. Houghland again, did you not? A. In which part of the year?

1412 Q. Did you at any time in the year 1941 see Mr. Houghland again? A. Oh, yes. He phoned me and wanted to see me in the beginning of the year.

Q. Did you see him? A. Yes; I think he asked me.

Q. Did you see him? A. To meet him in Savannah. I saw him several times in Savannah.

Q. In '41 you saw him several times? A. I think I saw him in Savannah, and I think I saw him in New York.

Q. In '41 in New York? A. That is what I recollect right now.

Q. I show you Defendant's Exhibit 106 and ask you if this is a copy of a letter you received from Mr. Houghland?

I wish to show it to your counsel first.

By the way, do you see Mr. Houghland in the courtroom? A. Yes.

Q. He is the gentleman sitting inside the rail on the right? A. Yes.

Q. Will you look at Defendant's 106 now and state

whether or not you received that shortly after
1413 January 13, 1941. A. Yes.

Mr. Burling: I offer it in evidence.

(The document referred to was marked and received in evidence as Defendant's Exhibit 106.)

By Mr. Burling:

Q. Look at Defendant's 107 and state if that is not a letter in your handwriting in which you wrote to Mason Houghland? A. Yes.

Mr. Burling: Thank you.
I offer that in evidence.

(The document referred to was marked and received in evidence as Defendant's Exhibit 107.)

By Mr. Burling:

Q. Now, Mr. Houghland indicated to you that he wanted to see you and discuss a matter of business? A. Yes.

Q. Will you state what the discussion was in the DeSoto Hotel in Savannah, Georgia? A. He was very much concerned about the general political situation, and he asked me what would happen to Spur in case of war would break out.

Q. What did you say? A. And I told him, he need not to worry. These were my worries and not his.

1414 Q. What else did you tell him? A. He started to dig into me, and he wanted to know a lot of personal, about my personal affairs, and I got somewhat suspicious about all these questions.

Q. Will you state what the questions were, please? A. He wanted to know who was behind Overseas, and also things which were no concern of his.

Q. Just go on and tell us as fully as you can what Houghland said to you in Savannah in January, '41? A. I can only give you general impressions. I was under the impression it was the questions he asked me were none of his business.

Q. I didn't ask you— A. (Interposing) Nothing to do with the operation of Spur.

Q. I didn't ask you your impression of his questions. I asked you to state them as fully as you can remember. A. I don't recollect anything, any single word of it.

Q. You have no recollection of any addition to what I have just asked you; is that correct? A. He started digging into me, and he wanted to know where the stockholders of Spur were, of Overseas were.

Q. Did he ask you anything else? A. No; that was the main question, and I got suspicious about this insistence because I had been warned previously against Mr.
1415 Houghland's loyalty. I gave him some wrong explanations.

Q. State what the wrong explanations are. A. I told him that Overseas was owned by some South Americans.

Q. And that was a lie, was it not?

Mr. Ingoldsby: Just a second. I object to that characterization of the statement.

The Court: Was it true or not, he asked him. I shall permit that.

The Witness: It was what you call a bum steer. I wanted to find out because I had no business dealings whatsoever in South America, and I knew that if this name South America would have come out that Mr. Houghland gave me away, and it came out through the FBI exactly a year later.

By Mr. Burling:

Q. In other words, will you agree Mr. Houghland was loyal to his country, rather than to you?

Mr. Ingoldsby: I object to that.
The Court: I think that is argumentative.
Mr. Burling: It is withdrawn.

By Mr. Burling:

Q. Now, as a matter of fact, some 36,000 shares of Harvard Brewery belonging ultimately to Uebersee was put down in the Monte Franco Company, wasn't
1416 it? A. No; this is entirely incorrect, Mr. Burling.

Those shares belonged to my wife, and they were when Adler—in Switzerland, when the people feared the Germans might enter Switzerland, Adler transferred a lot of their securities to their South American company.

Q. You say it wasn't Uebersee's? It belonged to your wife? A. Yes.

Q. How did she acquire them? A. I had given them to my wife.

Q. When did you give them to your wife? A. I don't remember the exact time.

Q. Did you ever file a gift tax indicating you gave the South American securities to your wife? A. That was done in Switzerland, and these shares, Mr. Burling, weren't kept in the name of some South American corporation, as you say, but were kept on my wife's account with Bleichroeder in New York, and there they were in New York.

If my wife had tried to hide something, she would not have left these shares right there for everybody to see.

Q. Now, going back to your conversation in the DeSoto Hotel in Savannah, Georgia, with Mr. Houghland, you didn't tell him at that time you were the beneficial owner of Uebersee and that you were a Liechtensteinean
1417 national, and hence would be a neutral, did you?

A. It is possible that he asked me about my citizenship.

Q. But you didn't say anything to him about, even if war between Germany and the United States would break out, you were the beneficial owner, and you would be a

neutral, did you? A. You are asking me two questions at once. Let me answer the first one first.

It is possible that I told him that I was a Liechtensteinean citizen.

Q. Of course, it is possible that you did, but did you? A. I don't recollect that.

Q. You have no recollection of having said that to him? A. It is absolutely possible I told him.

Q. Of course, it is possible. It is possible you told him that you were a Chinaman, but what did you tell him? A. If he asked me, I think I have given him an answer.

Q. Did he ask you? A. I don't recollect whether he asked me.

Q. Now, the second part of the question: You didn't say to him that if war between Germany and the United States would break out the Uebersee shares would be neutral because you would be the beneficial owner, and you were a neutral? A. To be an absolutely correct
1418 explanation, I don't recollect whether we went into this matter.

Q. You have no recollection that you did, do you? A. That would be in contrast to what I thought previously. I think I told him that some South Americans were interested in it.

Q. Now, as a matter of fact, in '39, Uebersee had invested about a half million dollars in Argentina, hadn't it? A. No, sir; you are badly mistaken.

Mr. Burling: I ask a concession that Defendant's 108 is a photostatic reproduction of a book of account of the plaintiff corporation.

Mr. Gallagher: If you say so, Mr. Burling, we are satisfied.

Mr. Burling: Thank you.

By Mr. Burling:

Q. I show you a book which bears the title, the translation of which appears as participations and securities.

Do you recognize that volume? A. Not right now.

Q. It is conceded by your counsel to be a photostatic reproduction of an account book of Uebersee Finanz-Korporation. The title of the book is Uebersee Finanz-Korporation, Limited, Liestal, and the English words, participation and securities.

Now, I open this.

1419 Mr. Ingoldsby: What are you attempting to prove by this book?

Mr. Gallagher: With respect to our concession, let us have it straight so that I don't put you on a wrong track. Dr. Kaufmann is in back. I don't know if it is his book or personal, but we concede you got the book from us.

Mr. Burling: Thank you.

By Mr. Burling:

Q. I am going to show you the page which refers to Argentinian participation, and open the book to that page and hand it to you and ask you to state the meaning of the entry which I have just shown you. A. Without seeing the connecting sheets, that is lined out or crossed out, as you see, so that doesn't mean a thing.

Q. It doesn't mean anything? A. No.

Q. What did it mean before it was crossed out? A. As far as I remember at this time, some Swiss banking group wanted to give me a loan or credit of about $300,000.

Q. State what date? A. It wasn't an investment of mine in Argentina. I hadn't any money at the time.

Q. Translate the words at the top of the page. A. It means participation, Argentina.

1420 Q. What does the top word mean? A. Participation.

Q. Would you explain what these entries mean, if you can read them? A. They are lined out, Mr. Burling.

Q. I understand that. A. But without seeing the connecting sheet--

Q. (Interposing) You may look at the connecting sheet. Please do so. A. How can I from one sheet?

You asked me about one sheet and you asked me yesterday about this income of 2.6 million dollars, and then I went into this matter what you gave this time, but you didn't ask me on this.

It was not in a book of Overseas but a question of testifying about that it was my personal book. It wasn't a book of income.

Q. Do you mean that your counsel— A. (Interposing) Or division of assets.

Q. Do you mean that your counsel delivered under a court order requiring him to produce books and records of the Uebersee Corporation, and they delivered to us an account book of yours personally; is that your testimony? A. No, Mr. Burling.

You wanted the books of Overseas and now my
1421 private accounts are sent.

Mr. Burling: We didn't ask for them.

Mr. Gallagher: You just got them. That was the point.

Mr. Burling: We were not told that until just now.

Mr. Gallagher: We weren't either.

The Witness: I was checking the matter. I could not answer you.

By Mr. Burling:

Q. What is this entry? A. It shows I had been given a line of credit of $300,000 by a group of Swiss bankers, and I had a line of credit against which I had pledged the Spur stock as their collateral until the end of '39.

Q. What did you intend to do with the credit in Argentina? A. That has nothing to do with Argentina.

Q. I thought you got the line of credit in Argentina? A. Yes.

Q. What did you intend to do with the credit in Argentina? A. You misunderstood me. I went to a group of Swiss bankers which had gotten together and had given me a line of credit, and I told you I was rather unliquid at the time, and I needed money, and so they loaned me the money against several collaterals, and among these collaterals were Spur and Harvard shares.

1422 Q. Will you explain what the credit in Argentina was to be used for? A. There was no credit in Argentina.

Q. Where did Argentina come into the picture at all? Just explain it. A. I tried to explain to you. It was a Swiss banking group, and they have, some of these bankers had participation in Argentina, and I wanted credit, and they gave me a credit, an Argentine credit, or something of this sort.

It was a group of Swiss bankers and it had nothing to do with Argentina. It was a loan of $300,000 credit which I had for four or five months, and which was cancelled.

Q. And that is why the line is drawn through the page? A. I could not tell you without checking on the relating sheets first.

Q. Is it customary in Swiss business practice to record credit extended to you in inventory of participations and securities? A. I could not answer that, but I will gladly go into it and show you the corresponding sheets.

Q. But you have at the moment no better explanation of what that entry is doing in the book? A. I am not a bookkeeper, Mr. Burling. I only can state you the principal facts.

1423 Q. Now, on this occasion in the DeSoto Hotel in Savannah, in January, '41, did you have any further conversation with Mr. Houghland? A. If you refresh my recollection.

Q. Did you tell him— A. (Interposing) We talked for several hours.

Q. Did you tell him that you were thinking of acquiring a yacht or sea-going boat? A. In '41? Yes, I think I was interested in yachting.

Q. The question wasn't what you were interested in, but what you told Houghland.

You did tell him something about a yacht, didn't you? A. It is possible.

Q. Didn't you show him navigational charts of the Atlantic Seaboard of the United States? A. I think I intended to sail—

Q. (Interposing) I didn't ask you what you intended. I asked you: Didn't you show charts to Houghland?

Mr. Gallagher: I can't see the relevancy. I think we are getting into irrelevant matters.

Mr. Burling: It is not irrelevant if you permit me to go on for two more questions, and I will show you the relevancy.

Mr. Gallagher: You could go on for half an hour and it is still irrelevant.

1424 Mr. Burling: I am coming to a relevant point almost immediately.

The Witness: I was sailing at the time in Florida.

By Mr. Burling:

Q. I didn't ask you what you were doing. You were in the DeSoto Hotel at the time I was talking about. A. Yes? Pardon me, but you were asking me about navigational charts.

Q. I asked you if you didn't show navigational charts to Houghland? A. It is possible.

Q. Did you? A. I don't recollect, sir. It wasn't anything of any importance.

Q. Well, is it not a fact that Mr. Houghland stated to you in words or substance as follows;

You ought to get rid of these charts; after all, Fritz, you are a German, and if we go to war with Germany and you are found in possession of these navigational charts, it might get you into trouble? A. I don't recollect that, but it was possible that Mr. Houghland made the statement.

Q. You have no recollection of that? A. No.

1425 — I kept those charts in New York in my apartment, and nobody ever objected to it.

You could buy them everywhere for 25 cents all during the war.

Q. Well, in any event, if Mr. Houghland did make that statement, you didn't correct him and say: I am not a German; I am a Liechtensteinean national? A. Now, just a minute ago you asked me whether he asked me, whether Mr. Houghland, whether I was a Liechtensteinean citizen, and I said if he asked me, I answered him so.

Now, all of a sudden, he asked me whether I am a German. That is contradictory; and certainly if he would make such a statement, I would have objected to it.

Q. But you have no recollection of objecting? A. I may have said—

Q. (Interposing) Please will you answer the question and not make a speech.

You have no recollection of having told Mr. Houghland: You are wrong; I am not a German; I am a Liechtensteinean? A. If Mr. Houghland—

Q. (Interposing) Will you answer the question? Do you have any recollection of having said to Houghland: You are wrong, Mason; I am not a German; I am a Liechtenstein? A. If I must—

1426 Q. (Interposing) Do you have any recollection of that, sir? A. Pardon me.

Q. Do you have any recollection of that? A. I only—

Q. (Interposing) Do you have any recollection, and I do not want to know your hypothesis.

Do you have any recollection now in your mind? A. I don't recollect that Mr. Houghland made such statement.

Q. And so— A. (Interposing) If he made the statement—

Q. (Interposing) Please stop. You are required to answer the question.

You have no recollection presently in your mind that you made any such statement to Houghland, do you? A. No, I don't remember.

Q. Thank you.

Is that meeting in the DeSoto Hotel not the last time you saw him until you saw him in this courtroom? A. No, I don't think so.

Q. Will you state where else you think you saw him? A. If I am not mistaken, I saw him in New York afterwards.

Q. What happened on that occasion? A. I think
1427 that was at the occasion of some directors meeting, if I am not mistaken.

Q. Do you remember when that took place? A. I think it was then twice. I remember, anyhow, I remember an incident in New York which took place in the office of my accountants, Bayer & Clauson.

Q. Will you state the incident, please? A. The Spur Corporation had filed a record with the Treasury, had to file a report with the Treasury stating the names and nationalities of the officers and directors of Spur Corporation, and in this list of stockholders or, rather, officers and directors, one of the board members, a certain man by the name of Ulrick, who was an American citizen for 30 or 40 years, they answered this question by saying, nationality unkonwn.

Behind my name, instead of saying, Liechtensteinean citizen, they answered, traveling on Liechtenstein passport, and furthermore, without being asked about it, they had added that I possessed huge, or considerable or big interests, in Germany, and that my family or parents and my sister was living in Germany.

About this report to the Treasury, I raised hell there in the office of Bayer & Clauson in the presence of Mr. Houghland, and told him how he would let go such a report by the Spur Corporation, and he begged my pardon.
1428 He didn't do it, he said, and it must have slipped through Mr. Ryan's, who did it, and I didn't believe that at this time because Mr. Ryan knew even less about me than Mr. Houghland.

Q. And that was the last time you saw Mr. Houghland until now? A. It is possible that there was another meeting on account of bonus, or so to be paid some time later. I don't remember exactly when this meeting took place about which we are speaking now, whether that was in the summer of '40 or '41. I think it was in '41.

Q. Now, coming to another topic, you recall that the Miami hearing board questioned you at great length about your trips into Germany after you left Germany; is that right? A. Yes.

Q. And you understood that they were trying to tell the degree of relationship that you had kept up with Germany, isn't that right? A. Yes, and don't overlook one thing, Mr. Burling. All my records and files have been taken, and I was unable to reconstruct—

Q. (Interposing) The answer to my question is yes. If you want to make argument, you can ask your lawyer who is there to argue for you. Please don't argue
1429 with me. A. I am trying to be cooperative.

Q. Specifically, isn't it true that the hearing board asked you about trips which you made to Germany after proceedings against your father were settled? Isn't that so? A. I don't recollect it.

Q. I will read to you from page 89 of the Miami record, referring to the settlement of proceedings, and weren't you asked this question:

"Question: I believe you said you came into Germany a couple of times after that?

"Answer: Yes; after the matter was settled.

"Question: That was after 1938?

"Answer: After thirty—it was settled in 1935.

"Question: You mean you went on hunting trips?

"Answer: I was, I think, hunting with my father. He had this estate, and he asked me to do away with some deer on it, and I shot about 15 or 20 deer from the estate."

Now, do you recall that testimony?

Mr. Gallagher: Which hearing is that?

Mr. Burling: It is the Miami hearing.

Mr. Gallagher: There was more than one.

Mr. Burling: There is only one Miami hearing of which you or I have record.

Mr. Gallagher: There was also one in 1942, and one in the fall of '43, of which we have copies. In addi-
1430 tion, there is one that is missing, and we don't know what was asked or stated at that hearing.

Mr. Burling: May I state to the Court: We were required by Judge Holtzoff to produce all the portions of the alien enemy hearing file that we intended to use in the trial, and we complied with that, and counsel have asked us in open court and privately, and we have repeatedly told them we do not have any more files, and we cannot give them those we do not have. They are in possession of all the hearings. Of course, we have our Department of Justice memorandum, but all the hearings we are in possession of have been furnished to counsel.

Mr. Gallagher: I accept Mr. Burling's word and it is not quibbling with him, but I wish to keep before the Court that there was a hearing held at which questions and answers were elicited that nobody knows what was stated or what was answered, and we want the record to reflect that.

By Mr. Burling:

Q. No, didn't you go on, after referring to the shooting of these deer, and state that you had made a trip to Kampen, and that you were visiting a lawyer there, a lawyer of mine, Mr. Gros? A. Yes.

Q. That is Dr. Gros, who is sitting in the court-
1431 room today? A. Yes, sir.

Q. Were you visiting him in Kampen or was he visiting you? A. I think he was at the seaside.

Q. I didn't ask you about the seaside. I asked you were you visiting him or was he visiting you? A. I went there for a business discussion with him.

Q. Please answer my question. I didn't ask you why. I said: Was he visiting you or were you visiting him? A. I was visiting him, but he had no house there. He was living there and I went there and talked with him.

Q. But you or your wife did have a house there? A. My wife had a cottage, a two-room cottage.

Q. Where was Mr. Gros staying? A. He was staying five or seven miles or so from us, in Westland.

Q. And you were staying with your wife, weren't you? A. Yes; for several weeks.

Q. So you were misleading the Miami board, were you not, in stating you went to visit Mr. Gros when you, in fact, were staying in the house rented by your wife? A. Mr. Burling, there I expressed my intention to go to Westland to meet Mr. Gros.

Q. But you omitted telling the hearing board that you
were not visiting Mr. Gros but staying in the house
1432 rented by your wife; isn't that true? A. I thought that was of no importance, however.

Q. You didn't think the hearing board wanted to know, after you had left Germany, that your wife was renting a house there? A. I thought it was brought out in the hearing that she was.

Mr. Gallagher: I want to make a point in connection with the questions and answers elicited, Your Honor. We are well aware that these enemy alien hearings are ex parte and star chamber proceedings, and we don't know how the word visit was defined.

Mr. Burling: Perhaps so, but he should ask that on further redirect examination, or on argument to Your Honor.

I should be permitted to bring out any additional facts that there are in the record of concealment and deceit on the part of this witness concerning his trips to Germany in the proceeding.

By Mr. Burling:

Q. Now, going on, didn't you tell the Miami board that the remaining time you were in Germany was in '39 when you visited your father in Wiesbaden? A. I guess so, if that is in the record.

Q. And the fact is that you were in Germany at least once in every year between '33 and '39, inclusive?

1433 A. I told you before that.

Q. Isn't that the fact, sir? A. That is possible.

Q. I didn't ask you about possible. A. Now, I have to get my file.

Mr. Gallagher: I am having difficulty following Mr. Burling's questions myself, and I don't want to annoy him, but this statement he is talking about, it is the settlement and the time his father had paid the fine.

Mr. Burling: Is counsel making an objection?

By Mr. Burling:

Q. I am asking if it is not a fact in every year from '33 through '39, inclusive, you were not in Germany at least once? A. That is possible.

Q. I didn't ask you if it is possible. Don't you know it to be a fact? A. If you want to know that, I will be pleased to tell you that now after.

Q. Don't you now know the facts? A. I now know the facts.

Q. Isn't it a fact that you were in Germany every calendar year from '33 to '39, inclusive? A. I think I was.

Q. Thank you.

1434 Now, during the period from January 1st, '33, to December 31st, '39, you were frequently in Germany for fairly long periods of time, were you not? A. No.

Q. How many visits did you make to Kampen during this period? A. I don't recollect that.

Q. Didn't you make visits on at least four separate summers, visits lasting between two and six weeks? A. No, I don't think so.

Q. What is your best recollection how many visits you made to Kampen and how many days you stayed there? A. I don't have any record showing that and no possibility of checking it, except going through this file of Overseas.

Q. Haven't you done that? A. And out of this file I try to reconstruct, and I have done it very thoroughly where I have been from the time I left Germany until the time I arrived in the United States.

Q. All right. If you have done this thoroughly, tell us what the facts are and figure out as closely as you can—A. (Interposing) Based upon these records, where I have been?

Q. Tell us what the facts are, won't you, please?

1435 A. The facts are that all this time from my leaving Germany until the outbreak of the war, I was in Switzerland 35 per cent of the time.

Q. Thirty-five per cent of the time? A. Yes.

Q. What per cent of the time were you in Germany?

A. In Germany 9 per cent, somewhat less than 9 per cent, and in America 34 per cent. In foreign countries other than America and Switzerland, 13 per cent.

Q. This is going from what period to what period? A. From the time I left Germany until the outbreak of the war.

Q. That is, you talk about 1929, now; is that right? A. No; '41.

Q. What is the beginning of that period? A. In the beginning of this period is December, '29, when I left Germany.

Q. And you go to December 7, 1941? A. Yes, sir.

Q. Now, you added a two-year period in which you were residing in the United States, or in Antwerp. Have you figured out the percentage since October 5th, '31? A. I would have to refigure that.

Q. I want to know something else. I want to know what time you were here until the outbreak of war? A. 1436 I didn't figure it out.

Q. Will you do so this evening, please? A. Well, I will try to do that.

Q. You will agree it would be more than 10 per cent because the two years previously you were in America and Belgium? A. I will try to figure it out.

Q. But you will agree it would be more than 10 per cent, won't you? A. I have to figure it out.

Mr. Gallagher: Could we ask: What are you trying to establish with this last questioning?

Mr. Burling: I will be glad to tell you. I am trying to show, to attack the witness' credibility by showing that he made a determined effort before this hearing board to establish that he was very, very infrequently in Germany, and now it turns out he was in Germany a great deal.

Mr. Gallagher: Even if it were true, which we deny, where is it material? What materiality does it have?

Mr. Burling: He lied to the enemy alien hearing board, and it attacks the witness' credibility, in my opinion.

The Court: I think you can raise that question after he has finished.

Mr. Burling: I will go on then.

By Mr. Burling:

1437 Q. Now, coming to the transaction which is covered on the chart by a box with a "X" painted over it, as I understand it, in 1934 you transferred the Uebersee shares to Frima; is that correct? A. Yes; about this time.

Q. And then in '36 a transaction involving the Union Bank of Switzerland took place; is that correct? A. Yes, sir.

Q. And is the following an accurate summary of what happened?

One, it was agreed between Frima and the Union Bank that Frima was transferring to the Union Bank all but three shares of Uebersee; is that right? A. Yes.

Q. Two, the Union Bank would purport to distribute the remaining Uebersee shares to the credit of clients, numbering more than ten; is that correct? A. I don't remember this detail, but along this line; yes.

Q. You don't remember the detail? A. It was more than 15 clients or so.

Q. Who handled the transaction? A. Between Dr. Henggeler and the management Bank Gesellschaft.

Q. Did Dr. Frankenberg give Dr. Henggeler in-
1438 structions to do this? A. No; it was Dr. Henggeler's idea.

Q. Did he consult you about it? A. Certainly. We talked it over.

Q. But you don't remember the nature of the contract with Swiss Union Bank. A. I am wondering about the

one figure you mentioned. You said ten members, and I think there were fifteen shareholders.

Q. All right. I said more than ten. A. Oh, pardon me: I understood ten.

Q. And wasn't it agreed between Frima and the Union Bank that the bank's clients would give an option which ran first to the bank and then from the bank to Frima, so that Frima could buy back the shares at the purchase price? A. It was an escrow agreement; yes.

Q. Is my statement correct or incorrect? A. Yes, I think it is correct.

Q. Thank you. And fourth, it was agreed that the purchasers could require the bank and then Frima to buy back shares at that price, was it not? A. Yes; to the original selling price.

Q. In other words, either of you could require the transfer back to Frima? A. Yes.

Q. At the original selling price? A. Yes; including interest and charges.

1439 Q. Well, as a matter of fact, the interest was fixed, was it not, so that the so-called purchasers were to be guaranteed a dividend of 6 per cent, irrespective of how the Uebersee shares were made out? A. That is correct, yes. I cannot—

Q. Thank you. Thank you. I haven't asked you another question.

And it was further provided that there was to be a contractual obligation on the part of the so-called purchasers that they would either deliver proxies to the bank, which would then deliver them to Frima, or that the purchasers would agree to vote the shares in accordance with the Frima instructions? Isn't that correct? A. I think that is correct.

Q. And was it not further agreed that Frima would not withdraw the purchase price from the Swiss Union Bank, but would leave the purchase price in the bank as a guarantee that it would be prepared to buy back the shares? A. I think that was done.

Q. And it was also provided, wasn't it, that if Frima wished to withdraw the purchase price and substitute securities, that it must put up a margin of 40 per cent? A. Yes; that is a natural thing to do.

Q. Thank you. Was it not also provided that the Swiss Union Bank would deposit the Uebersee shares with a
1440 bank called Bank in Baden? A. I think that is part of the contract, yes.

Q. And it was even provided, was it not, that Frima should pay the Bank in Baden the deposit fee for holding the Uebersee shares? A. Yes, I think that is in the contract.

Q. Thank you. Now, will you not agree that it was a matter of no interest to the purported purchasers whether the real value of Uebersee went up or down, because they were guaranteed their purchase price back? A. They were safeguarded, yes.

Q. They were safeguarded. And if the stock went up, it wouldn't do them any good, because Frima had the right to get the shares back, at the original price? A. Certainly. I wanted to be in control.

Q. And you remained in control, didn't you? A. By the right of repurchase.

Q. By the right to have Frima control the voting of all the shares? A. By those proxies, yes.

Q. And will you not agree that this purported sale to these purported Swiss stock shareholders was a sham transaction undertaken by you for the purpose of avoiding the United States personal holding company tax?

Mr. Ingoldsby: I object to that, Your Honor. The
1441 witness has testified as to what the facts are in the transaction. Whatever significance attaches to those facts, I believe attaches.

The Court: I think that is correct, Mr. Burling.

Mr. Burling: I was asking him his purpose.

The Court: You can ask him his purpose.

By Mr. Burling:

Q. Isn't it true that your purpose in going through this transaction was to void the American personal holding company tax? A. No; that is not correctly stated, Mr. Burling. Do you want to know the purpose?

Q. No; I want to ask you another question.

Did you not tell Mr. Gros that was exactly your purpose? A. He was, at this time, negotiating with the Nazi Government about this waiver; but even in the case he would not succeed, that my father was not in immediate danger with the Niessbrauch, for two reasons—the first reason I give you, that I controlled American subsidiaries, and our dividend policy, and that therefore Overseas would not receive any dividends.

I further explained to Dr. Gros that some of the American corporations were largely undercapitalized, particularly the Harvard Brewing Company, and that for this reason, for a number of years, even if my father would
1442 be forced to establish a Niessbrauch, that nothing would come out of it.

In addition to that, I wrote Dr. Gros that this American tax which came in, I think 1934 or 1935, was a real God send. It gave me an opportunity to set up this, to make this agreement with the Bank Gesselschaft, and it gave me an explanation towards the Nazis if they got suspicious about it. I then could say, "This, as you see, is made on account of tax purposes."

In reality it was a protection of my interest, because all through 1935, to the end of the year, I discussed this problem with Dr. Gros; and even through 1936 and 1937, I was not sure whether the leading viewpoint of Dr. Gros would prevail.

And even in 1938, after the Reichsbank had admitted that our waiver was legally unassailable, even then the Reichsbank said, "But we are going to use political pressure."

And I was concerned, and afraid of this political pressure, which was brought to bear upon my father, to the end of 1939, I think it was—1938 or 1939, shortly before the outbreak of the war—and therefore I was very much pleased with the fact that I could set up these Swiss stockholders, with the excuse towards the Nazis, in case they would put on new pressure.

Q. While you were in Germany, in the years 1933 through 1939, did you hear many people talking about the
1443 Nazi Party members and SS members who were being subjected to political pressure? A. In 1934, thousands of friends of the party and party members were shot.

Q. Yes; that was the Roehm purge, was it not? A. And those things happened off and on at all times through the Nazi regime.

Q. Let me see if I understand you correctly. Your testimony is that this transfer to the Swiss stockholders, under these arrangements, was for the purpose of making it look to the German Government as if neither you nor your father owned the Uebersee assets? A. No; my father had nothing to do with it. The Nazi Government knew it was myself, you see. And even the waiver was at this time—

Q. We haven't come to the waiver, and there wasn't any waiver ever filed, was there? A. Definitely

Q. You say there was a waiver filed? A. Certainly.

Q. Well, we will discuss that later.

At any rate, is it your testimony that this transaction here, that is to say, that the shares sale was for the purpose from concealing from the Germans the fact that you still in fact owned the Uebersee Finanz-Korporation? A.
1444 That was the main purpose.

Q. I see. That was your main purpose? A. Yes.

Q. Thank you. And you used—

Mr. Ingoldsby: Pardon me, Your Honor. I think the witness was being asked about his motives for doing this. He

said that was his main purpose. If he wants to state any other purposes, I think he has the right to do so, by way of explanation.

The Court: You can ask him that later on.

By Mr. Burling:

Q. And you have explained to your lawyer this transaction, in terms of concealing from the American Government the fact that you owned the Uebersee Finanz-Korporation? Is that right? A. No. That is not quite correct. I only mentioned the fact that Dr. Gros stated that I might do that. And I stated that, I think, in the middle of 1935.

Q. Now, before the year 1942, did you ever file or cause to be filed personal holding company tax returns for Uebersee, for the years 1936, '37, '38, '39, '40, or '41? A. As far as I remember, the law remained unchanged in 1936 and 1937.

Q. All right. Did you file returns for those years?—

1445 prior to 1942? A. If I might explain to you—

Q. No; just answer the question, please.

Did you file returns for 1936 and 1937, prior to the year 1942? A. I don't remember what was filed.

Q. And do you have any reason to believe that personal holding company tax returns were filed prior to the year 1942? A. Yes; I think they were filed in the years 1933, 1934.

Q. No. You didn't file a tax return for the year 1936, in the year 1933; did you?

I am talking about tax returns for 1936 and 1937, now. A. I think they were filed.

Q. When? A. In accordance with the law.

Q. When? A. From time to time—

Q. When? A. Shortly or afterwards, they were filed every year.

Q. Don't you know they were not filed until 1942? A. I think they were filed in 1936 and 1937. And the law then

was changed, if I understand it correctly, in the year 1938.

Q. In 1941 and 1942, a law firm in which Mr. Isadore Kresel was a partner handled your tax matters, isn't
1446 that right? A. Yes.

Q. And they were also counsel for Uebersee Finanz-Korporation, were they not? A. Yes.

Q. What is the name of the lawyer who particularly handled Uebersee's tax problems? A. I think it was Mr. Marin.

You mean here on the American side?

Q. Yes. A. I think it was Mr. William Marin, in Mr. Kresel's office.

Q. Mr. William Peyton Marin? A. I think so.

Q. Will you look and see if this is not a letter signed by Mr. William Peyton Marin on behalf of Uebersee Finanz-Korporation? Look at the signature and see if you do not recognize it. A. I think that is Mr. Marin's signature, isn't it?

Q. And will you look and see if that wasn't written to the Treasury on behalf of you and Uebersee? A. Yes.

Mr. Burling: I offer it in evidence, Your Honor.

Mr. Gallagher: Just a moment, Mr. Burling. May I see it first.

1447 Mr. Burling: Yes, certainly (handing the letter to counsel).

By Mr. Burling:

Q. Will you look at this letter and see if it indicates to you when the income tax returns for Uebersee Finanz-Korporation for the years 1936, '37, '38, '39, 1940 and '41 were filed? A. You mean paragraph 2, Mr. Burling?

Q. I mean paragraph 2. Would Mr. Marin's letter indicate to you when the income tax returns for Uebersee were filed for those years? A. Yes. But I am sure there

were some filed previously to it. I think it was only a reassessment.

Q. Now will you look at paragraph 8, which has the following words—

Well, prior to the numbered paragraphs, does it not read as follows—

"Pursuant to a tentative closing arrangement made with Mr. Albert Schwartz, Internal Revenue Agent, I enclose herewith and am filing for the respective taxpayers therein named, the following:

"* * * * * * *

"8. Personal holding company returns for the calendar years 1936 to 1941, inclusive (some in duplicate as required by law) executed on behalf of Uebersee 1448 Finanz-Korporation, A. G. by me as attorney in fact, together with affidavit of Dr. Hans Frankenberg setting forth the reasons for the late filing of each of said returns."

Does that suggest to you when the personal holding company tax returns were in fact filed? A. Yes, at this date.

Q. And they were not filed previously, were they? A. There must have been some reports filed previously. They were filed every year.

Q. Are you in possession of any copies of personal holding company tax returns which were filed every year, as you state, during the period? A. I have to check that.

Q. I request that you do so and inform me prior to the end of this trial.

Mr. Gallagher: Mr. Burling, may I ask if this affidavit referred to in subparagraph H, by Hans Frankenberg, is in your file?

Mr. Burling: I do not have it, sir.

Mr. Gallagher: You do not have the stated reasons for the late filing?

Mr. Burling: No, sir.

Mr. Gallagher: Is it in the Treasury? Have you checked on that?

1449 Mr. Burling: It may be. We have asked for the entire file.

Mr. Gallagher: But, at the present time, this is all you have?

Mr. Burling: Yes; and I call upon the plaintiff, if it is in possession of any documentary evidence, showing current filing of the personal holding company tax returns, to produce such documentary evidence, including file copies of earlier returns.

Mr. Gallagher: Just a moment, Mr. Burling. I don't understand your demand that we should be filing personal holding company tax returns now, while you have the property vested, do you?

Mr. Burling: No. I am talking about returns for the years 1936 to 1941, inclusive.

I assert that there is at least a prima facie case established to show that the tax returns were not filed until 1942. And I request counsel for the plaintiff corporation to produce such returns, if they have returns indicating that they were currently filed.

Mr. Gallagher: We will look for that. And, in connection with my request to you, as to the Frankenberg affidavit referred to in that letter filed with the Treasury, and which you say you cannot locate in the Treasury Department, I ask you at this time to state whether or

1450 not the files of the Treasury Department reflect whether or not any fraud penalty was ever imposed here, or any delinquency penalty?

Mr. Burling: I do not know the answer to that.

The Court: Gentlemen, I am afraid we are going to have to move along here. We have taken a lot of time on this examination. We had better get to a close.

Mr. Burling: Yes, Your Honor.

By Mr. Burling:

Q. Is it not also true that the purchase price which the purported purchasers paid was a total of $166,000? A. Yes; I think that was the amount.

Q. And that was about 5 per cent of the book value of the shares? Isn't that true? A. You are entirely mistaken, Mr. Burling.

Q. Hadn't you put about $3,700,000 into Uebersee at this time? A. But you are entirely mistaken.

Q. Fine. How much had you put into Uebersee at the time you made this sale agreement? A. At the time, don't forget—

Q. Just answer the question, please. A. I had a claim, what Frima or myself had put into Overseas, and these amounts you mentioned were credited to me with Overseas.

Q. How much had you put into Overseas? A.
1451 I think I was appearing as a creditor on the Overseas books.

Q. How much did you put into the Overseas stock? A. About 11.5 million Swiss francs, that was the adjusted value. First I think it was about fifty million francs, and we had to write off about three million on account of the loss on the gold. So I had to write down my claim to abut eleven and a half million.

Q. At any rate, the true value of the Overseas stock was far in excess of $166,000? Isn't that true? A. You are entirely mistaken. I think it was even lower than this value. You see, the value of the stock is only the difference in assets against its liability.

Q. I see. Now, look at Exhibit 48-A again and I address your attention to the paragraph beginning in the middle of page 5 of the English translation. A. Page 5?

Q. Page 5 of the translation. A. Yes.

Q. It begins: "These plain facts, which can be proved at any time"—

It is toward the end. A. Yes.

Q. I want to read you these words, and ask you the explanation:

1452 "These plain facts, which can be proved at any time, have become still more complicated by the fact that I shall probably have to reorganize the holding company. The reasons are as follows:

"The revised American income tax law considers all companies whose majority is held by five persons or less are private holdings, i.e. these companies are required to pay not the customary corporation taxes of 13-1/4 per cent, but the rates applying to private individuals, which are several times higher. That means practically that only such companies are recognized as holding companies which have eleven or more stockholders.

"After extended consideration I have finally found a way to meet this requirement, namely by selling to outsiders all the stocks I own. To be able to do this I have to keep my credits with the holding company on a loan account and to obligate myself towards the prospective stockholders not to claim any interest until the stockholders have been satisfied and sufficient reserves accumulated."

A. Yes, if I may say, that this claim is for this claim of eleven and a half million Swiss francs which I just mentioned.

Q. And in this letter you in effect tell Gros that

1453 August 2, 1935, is it not? A. Yes.

Q. And in this letter you in effect tell Gros that this shares sale transaction is a way around the American personal holding company tax? A. Pardon me. You have to read it in the first part. I tell him in the first part that even if a Niesshrauch has to be established under force, that even then no dividends will be paid, and then in addition to the economic situation, I mention this tax situation.

Q. That is to say, you are here saying, "Even if it should become necessary to bring the Niessbrauch right into existence, it might still be dangerous; so you have to change the tax setup?" A. No. Mr. Burling. You misunderstood me. I indicate in this letter—and let me rather explain it this way:

The first part of the letter deals with legal arguments, and I said:

"Dr. Gros, I am more pessimistic than you are. I cannot share your optimism. We were hit too hard a year ago, but now conditions are a little smoother, and you might succeed. But still in my mind it is somewhat doubtful."

Q. What is somewhat doubtful? What is it you
1454 are talking about? A. I was rather pessimistic whether Dr. Gros would finally succeed in having this waiver accepted.

Q. At this time, at the time you wrote this letter? A. Yes; I was rather pessimistic, and I remained pessimistic, through all the time—

Q. I am just talking about this letter. Let us address ourselves to that. At this time you wanted Gros to persuade the German Government that there was no Niessbrauch? Is that right? A. Pardon me. It wasn't up to me to tell him that. My father had given him the order to get rid of this Niessbrauch any way he wanted to.

Q. Did you know that at the time you wrote this letter—August 2, 1935? A. Now, Mr. Burling, I now found out, last time you didn't give me a chance to read this letter, and I now found out I had spoken to my father before, as stated in the beginning of the second from the last paragraph.

Q. So that all of your testimony which went on about an hour about this letter a few days ago was wrong? Is that right? A. You didn't let me read the letter. You just pinned me down on one sentence or paragraph.

Now, I see here, in the second from the last paragraph, I am speaking about complimentary—

1455 Q. Where are you reading from? A. The second from the last paragraph of the letter—your discussion in addition to the gift agreement.

Q. Wait a minute. I will read you the second— A. The second from the last paragraph.

Q. That is, "I thought I should explain to you"? A. No, that is not the one. The one further. The second last.

Q. That is the second last, is it not? A. No; it must be—may I show you?

Q. Please do. A. Yes, that is the one. They didn't make a paragraph, here (indicating).

Q. So now you testify that prior to having written—

Mr. Gallagher: Excuse me, Mr. Burling. I would like to have His Honor have this exhibit in front of him while you are discussing it, as I think it will save time on the redirect.

It is the letter of August 2, 1935, the last paragraph—

Is that right, Mr. Burling?

Mr. Burling: That is right.

By Mr. Burling:

Q. So now you testify; do you, that prior to August 2, 1935, you had told your father about your conversation with Frankenberg in which you asked him to hold

1456 the key as agent for Wilhelm von Opel, and that your father said he didn't want that? A. Yes.

Q. When did that conversation with your father take place? A. That must have taken place prior to this letter—I guess about two weeks prior to this letter.

Q. And all the testimony taken the other day concerning this letter is incorrect? Is that right? A. Definitely, because you didn't give me a chance to read the letter,

Mr. Burling. I am very sorry that that happened, but it was not my fault.

Q. I think the record will show whether I have given you a chance to read the documents.

Can you fix the time and the place where you now say you had this conversation with Wilhelm von Opel? A. It must have been in the weeks prior to this letter.

Q. Well, fix the date as accurately as you can. A. I am unable to do that.

Q. Where did the conversation take place? A. I think in Wiesbaden. And we had additional conversations, because this first draft of the declaration I think wasn't the final one we agreed upon.

Q. Now, you understand, do you not, that if the usufruct in fact arose, as opposed to a claim to create a usu-
1457 fruct, then it would be impossible to waive it without a license from the German Government?

Mr. Boland: I object, Your Honor. I think that calls for a legal conclusion. This witness is not qualified for that.

Mr. Burling: This witness has spent years on that, and I want to know what his state of mind is.

The Court: What is the question?

The Reporter (reading): "Question: Now, you understand, do you not, that if the usufruct in fact arose, as opposed to a claim to create a usufruct, then it would be impossible to waive it without a license from the German Government?"

The Court: I don't think we can take his opinion on it.

Mr. Burling: I don't want his opinion, if Your Honor please, as a legal opinion. I want it as bearing on what Mr. Gallagher intended to do on redirect.

The Court: Let us get on to the redirect. I am afraid we are going rather far afield, anyway.

Mr. Burling: If Your Honor please, perhaps to save

time I could ask if counsel will concede that the answer to Interrogatory 7 is inaccurate, in that it states that the 97 shares of Uebersee were, during the period of this Swiss Union Bank transaction, in the possession of the named clients of the bank, since it appears from
1458 the testimony that they were in the possession of the Bank in Baden.

And I further ask the concession that the answer to Interrogatory No. 8 was wrong, in so far as it recites that the names of the beneficial owners of the stock of plaintiff corporation were as stated in the list of Swiss—

Mr. Gallagher: That should be corrected. That No. 8 obviously is in error. I concede that. But I do not understand your request in connection with 7.

Mr. Burling: I do not believe the testimony supports the answer, in so far as it recites that the shares were in the possession of the Bank Gesellschaft. It appears they were in the possession of the Bank in Baden, pursuant to the escrow agreement.

Mr. Gallagher: If you want to correct it to physical possession, or constructive possession, or pursuant to the escrow agreement, we will gladly change it to that.

Mr. Burling: All right; thank you.

By Mr. Burling:

Q. Now, by 1939 Uebersee had an investment in a plantation in Tanganyika, valued at about seventy thousand dollars? Isn't that so? A. I acquired that with German marks in 1932.

Q. It was an investment of Uebersee's in 1939, wasn't it?

A. Yes.

1459 Q. And it was carried at a Swiss franc value equal to about $70,000? Is that right? A. I don't recollect the figure. Approximately I think it is correct.

Q. And throughout the month of October, 1939, you

were a German national, were you not? A. At this time my application was pending for naturalization.

Q. But you were a German national, nevertheless.

Mr. Boland: Your Honor, may I ask counsel to clarify what he means by a "German national"?

Mr. Burling: Citizen of Germany.

Mr. Boland: But you are using them synonymously.

Mr. Burling: I am using them as used in the Act of 1940.

By Mr. Burling:

Q. And is it not true that in 1940 you caused Uebersee to tell its agents in Tanganyika to report to the British Enemy Property Custodian that the Tanganyika plantation was Swiss owned?

Mr. Gallagher: Which year is this, Mr. Burling?

Mr. Burling: October, 1939.

Mr. Gallagher: You stated 1940.

Mr. Burling: Thank you.

The Witness: I don't remember that that is possible.

By Mr. Burling:

1460 Q. Do you remember that the plantation was seized by the custodian? A. I think a report had to be filed—

Q. Do you remember that the plantation was seized by the custodian, after the war between Germany and England started? A. Yes, I remember that.

Q. And didn't you cause Uebersee to report to the custodian that the plantation was owned by Uebersee, and Uebersee was Swiss owned? A. Yes.

Q. And was that true or false? A. It was at this time technically owned by the stockholders. And I personally, Mr. Burling, in 1940, as well as in the report you just

yesterday read into the record, my report to the Treasury, I mentioned that I personally was the owner of this plantation.

Q. When did you do this? A. In 1940 and 1942.

Q. Did you ever report that to the British? A. In 1940 to the British, yes, in Gibraltar.

Q. After you had acquired your Liechtensteinean citizenship, but not before? Is that right? A. Yes.

Q. In other words, you know that before you
1461 became a Liechtensteinean citizen, you were the beneficial owner of the plantation in Tanganyika, and that was concealed from the British custodian? Isn't that so? A. It wasn't concealed from the British custodian. In fact; this plantation, since the time I bought them, they were called Opel Estates. Everybody in the colony knew they were my plantations. If I wanted to conceal something, they certainly would not have been called "Opel Plantations". That is a very rare name.

Q. Now going back, Adler & Company, prior to 1931, had been the Opel family bankers in Zurich for many years, had it not? A. No, definitely not.

Q. At any rate, you dealt with— A. Which year?

Q. 1931. A. 1931, no.

Q. At any rate, in 1931, in the spring—

Mr. Burling: And I think I can say, Your Honor, I am on my last topic. And I know Your Honor's patience is wearing thin, but I will sit down in a few minutes.

The Witness: As far as I know, I can only speak for myself and what I know of my father's business. But to the best of my knowledge, no member of my family ever did any business with Adler & Company except myself.

1462 By Mr. Burling:

Q. I see. A. And I myself, the first business I did was in 1931.

Q. And in the spring of 1931 you had business with Frankenberg, didn't you, Mr. von Opel? A. With the Adler Bank, yes.

Q. With Frankenberg, didn't you? A. He represented the Adler Bank.

Q. Well, that is the answer; thank you.

And Frankenberg was an old acquaintance of your father's when you first started doing business with him, wasn't he? A. My father knew him since about after the first world war, and so did I. He was a casual acquaintance. But he was no business connection of my father's.

Q. Now, one of the reasons which particularly interested you, in the spring of 1931, in purchasing Uebersee, was that Frankenberg agreed to become a member of the board of directors? Isn't that so? A. You are now talking about the spring of 1931, Mr. Burling?

Q. Yes, sir. A. In the spring, 1931, Dr. Frankenberg wasn't at all in the picture, because at this time I only had a right to acquire 60 per cent of the capital stock.

Q. All right. A. You are mixing up those two 1463 separate deals.

Q. At any rate, one of the reasons which ultimately caused you to buy Uebersee was the fact that Frankenberg agreed to become a member of the board of directors; wasn't it? A. I wouldn't put it this way.

Q. All right; you won't; thank you.

You did put it this way in an affidavit which you filed with the Treasury Department, didn't you? I will read you a sentence and see if you can recall it.

Mr. Gallagher: What is that, Mr. Burling?

Mr. Burling: The affidavit of August 26, 1941—

"Another circumstance which enticed me to buy this corporation was that Dr. Hans Frankenberg, a partner in Adler & Company, agreed to become a member of its board of directors."

The Witness: It was one of the reasons, yes—but not the single reason, Mr. Burling.

By Mr. Burling:

Q. And your father suggested to you that Frankenberg should become managing director of the holding company? A. I asked my father—

Q. Did he or did he not suggest it, sir? A. I asked him—

Q. Did he or not suggest that Frankenberg be-
1464 come managing director? A. I do not recollect, sir.

Q. Didn't you so state under oath? A. It is possible, yes, sir.

Q. Didn't you state—not that it was possible—that he did suggest this? A. Yes.

Q. You did swear to that, didn't you? A. Yes.

Q. All right. And you had a conference with Frankenberg in which you asked him if he would be willing to serve as a member of the board, and managing director of the Uebersee Finanz-Korporation, A.G., did you not? A. Yes.

Q. And he stated he would do so, did he not? A. Yes, and he did it.

Q. And when you invested in the stock of Spur Distributing Company, you frequently consulted with Dr. Frankenberg in his capacity as managing director of Uebersee, did you not? A. He always—

Q. Did you not? A. Yes.

Q. And in the fall of 1932, you discussed with Frankenberg your concern over the future gasoline supply
1465 of Spur, did you not? A. Yes.

Q. And when you went into the oil production field in 1933, you and Frankenberg jointly handled this, did you not? A. I mentioned the situation to him, and he advised it it would be a profitable investment.

If I may add something, Mr. Burling, I think yesterday—

Q. Please don't volunteer. I am trying to finish. A. Pardon me.

Q. Didn't you say, in your gold case affidavit, as follows?—

"In these corporations Uebersee during 1933 invested an aggregate of $756,000. Dr. Frankenberg and I intended on behalf of Uebersee greatly to increase its investments in these oil companies and would have increased them were it not for the impounding of the company's gold in the United States in March, 1933, as hereinafter described."

You state that under oath, did you not? A. Yes, that is correct.

Q. And you further swore, did you not, at folio 185—

"It was by reason of these pending investments on behalf of Uebersee Finanz-Korporation, A. G., that Dr. Frankenberg and I caused the liquidation of bonds held for its account as above described."

1466 A. That is correct.

Q. And in December, 1932, you had a discussion with Frankenberg, in Frankenberg's capacity as managing director of Uebersee, did you not? A. I had very many discussions.

Q. With Frankenberg in his capacity as managing director? A. Yes.

Q. Thank you. And in February, 1933, Frankenberg told you what to do with respect to certain cash holdings— A. He advised me—

Q. Didn't you? A. On account of the bank holiday.

Q. Didn't he tell you— A. He advised me, yes, sir.

Q. And you did purchase gold, didn't you? A. Yes.

Q. And the gold was stored with Ladenberg, Thalmann & Company, wasn't it? A. Yes.

Q. And that was suggested by Frankenberg, wasn't it? A. Yes; I think Dr. Frankenberg was a former partner of Ladenberg & Thalmann, in Frankfort.

Q. Now, is your property blocked in Switzerland by the

Swiss Compensation Office? A. The situation in
1467 Switzerland, I have no property in Switzerland which is of any value to me right now.

Q. But there is a blocking order against your property, is there not?

Mr. Gallagher: Your Honor, I wish to enter an objection to this line of inquiry of Mr. Burling, wherein he is asking what action the Swiss have taken. There is a long story behind it, and we are not in any position to give this court any information of this situation, until we have gotten further information from Switzerland. But at the moment we submit any action taken by the Swiss as to any personal assets is immaterial, as far as this proceeding is concerned.

Mr. Burling: I think probably my friend's position is right.

If you will agree you will not raise—

Mr. Gallagher: No, I will not agree to that. We are checking that situation now, Mr. Burling, and I think you are well aware of what we are checking.

Mr. Burling: I will save any point I have, for recross, and will withdraw the question now, Your Honor.

The Court: All right.

Mr. Burling: And I have only one further question—

By Mr. Burling:

Q. Is it now your assertion that Defendant Exhibit 49
1468 relates to your personal books? A. What is called here "Consortium Q"—yes, pardon me. These are my personal books, Mr. Burling.

Q. I see. A. And also—

Q. Wait a minute. This is a book about which I examined at considerable length, and you did not recognize it as your personal book. Is that correct? A. Pardon me. You asked me to explain if that is the income account of 2.6 million in Overseas.

Q. I am talking about this book here, Defendant's Exhibit 49.

Mr. Gallagher: Just a minute, Mr. Burling. If I recollect correctly, you only showed him one page at that time, page 16—

Mr. Burling: I think that is correct.

Mr. Gallagher: And you prefaced the statement that it was a Uebersee book, and I think the record will show that to be correct.

Mr. Burling: If Your Honor please, I can say I have no personal knowledge of Uebersee's books. We were given this book as being a book which was a record or account of book of the plaintiff. I had no knowledge other than the fact—

The Court: I think we are arguing here. What is it you want to find out about it?

Mr. Burling: I now want to cross examine. I don't believe the witness.

1469 The Court: What do you want to find out?

By Mr. Burling:

Q. Are there any other books and records you know we have been shown which are your personal account books and not the accounts books of Uebersee? A. I couldn't make such a sweeping statement, Mr. Burling. I only know you asked me to clear up what this page 16 meant, and that is what I did. And you did not only get the books from Overseas, Mr. Burling; you also got the books of Frima, and this is a Frima book.

The Court (to the witness): Just answer his questions.

Mr. Burling: I would like either for the witness or his counsel to give us a statement as to what books they were in error on when they gave us the books. They told us they were giving us the books of Uebersee.

Mr. Gallagher: I can make a statement, Your Honor.

The Court: Don't make a statement. Bring it out on redirect.

Mr. Gallagher: All right, sir.

As to redirect, Your Honor, I think we could more rapidly dispose of Mr. von Opel in the morning, if Your Honor please, if Your Honor would be disposed to adjourn a little earlier than indicated.

The Court: That will be all right.

Mr. Gallagher: And, if Your Honor please, I
1470 would like to get rid of this one point as to which Mr. Burling made quite a bit of, the fact that in response to the interrogatories 27 and 28, which were:

"27. Describe the nature of plaintiff's interest in bauxite mines in Hungary at all times from October 5, 1931, to June, 1942."

And the next one, Your Honor, Interrogatory 28—

"State the nature of plaintiff's interest in any corporation holding or holding bauxite mines in Hungary, or bauxite mining rights in Hungary, at all times from October 5, 1931, to June, 1942."

And then he said the plaintiff has answered in this fashion—the answer to 27:

"The plaintiff had no interest in bauxite mines or bauxite mining rights in Hungary at any time."

And the answer to 28:

"The plaintiff had no interest in any corporation holding or owning bauxite mines or mining rights in Hungary from October 8, 1931, to June, 1942."

Now, he failed to read, which I want to read, the following interrogatory, so that Your Honor is cleared up on it—the next interrogatory being, their next interrogatory, number 29:

"Describe in all detail all actions taken by plaintiff or by any agents of plaintiff, including Fritz von
1471 Opel, concerning the mining of bauxite in Hungary at all times from October 5, 1931, to June, 1942."

We responded as follows—and at the time it was prepared, we thought the stock had merely been hypothecated to Mr. von Opel; but for the purposes of this inquiry it made no difference whether he owned it, or the plaintiff. However, here is our answer:

"Answered as to plaintiff in responses to interrogatories 27 and 28,"—in which it was stated that plaintiff had no interest—

"However, Fritz von Opel organized the Transdanubia Bauxite, A.G."—

Mr. Burling: You are reading that unintelligently, Mr. Gallagher—

"Answered as to plaintiff in responses to interrogatories 27 and 28. However, Fritz von Opel organized the Transdanubia Bauxite, A. G., having a capital of 300,000 pengos party paid in. This corporation owned bauxite mining rights in Hungary."

Mr. Gallagher: All right, Mr. Burling.

The Court: Now, you gentlemen have been arguing this case all the way through, for beginning to end, and I have gone along with it, because I don't want to control the way you gentlemen run your case. But so many of the questions are argumentative, and there have been
1472 so many of these little sallies.

I am going to give you plenty of time to argue it. Those things don't make any impression on me, until the case comes to an end. I have been trying cases as a lawyer for 25 years, and as a Judge for ten years. I don't draw any conclusion until I hear the argument at the end. I think if you will just keep to the questions, and have the argument at the end, we will save a lot of time.

I don't want to interrupt either one of you, because I know you have a complicated case and a good many questions. But I promise to give you a full argument on it, on both sides.

(To Mr. Gallagher): You want to stop here?

Mr. Gallagher: Yes, Your Honor. I think it would be more expeditious if we did.

The ourt: All right, until 10 o'clock.

(Accordingly, at 3:55 p.m. the trial was adjourned until 10 o'clock tomorrow morning, Wednesday, December 22, 1948.)

* * * * * *

1475 FRITZ VON OPEL, returned to the stand and was examined and testified further as follows:

Redirect Examination

By Mr. Gallagher:

Q. Mr. von Opel, during the close of yesterday afternoon's session you were answering Mr. Burling and you gave him a breakdown of the time you had spent between 1929 and 1931. And as I recollect that breakdown in general it was to the effect that approximately 35 per cent of your time during that period had been spent in the United States, 35 per cent in Switzerland, 9 per cent in Germany, and the remainder of the time in other countries.

At that time Mr. Burling asked you to prepare a breakdown from October, 1931, until the end of 1941. Have you prepared such a breakdown? A. Yes.

1476 Q. Would you now state for the record what that breakdown reflects as to where you spent your time from October, 1931, until the end of 1941? A. From October 5—

Q. From October 5, 1931, would you read that breakdown? A. I spent in Switzerland 41 per cent of my time; in the United States, 30 per cent; in various countries, 14.5 per cent; in Germany, 10.1 per cent; and interned and unaccountable, 4.4 per cent.

Q. All right. Now, Mr. von Opel, in connection with that breakdown, did you also prepare a statement which would

reflect the reasons for each of your trips to Germany during the years 1931 to 1941?—the 10 per cent figure you were speaking of? A. Yes, I did.

Q. Would you state for the record the purposes of each of the visits during that period of time, year by year, commencing with 1932? A. In 1931, I saw my father shortly after my return from the United States, and I saw also an architect in Berlin.

Q. All right—1932. A. Yes.

Mr. Burling: Excuse me. The witness said 1931.

Mr. Gallagher: Yes, and now I am asking about 1932.

The Witness: In 1932 I paid a visit to my sister. I saw this architect again. And I was in Berlin trying to
1477 release about a hundred thousand blocked marks I had there, for which I bought this Tanganyika farm.

By Mr. Gallagher:

Q. All right; now 1933. A. In 1933 I was there to purchase furniture from an interior decorator, in Berlin.

Q. Yes. A. In 1934, the foreign funds control proceedings against my father began, and I had of course several conferences in these matters.

Q. How much time did you spend in Germany during 1934 in connection with those proceedings? A. I should say altogether I think twice, each four weeks.

Q. For a total of about eight weeks, in 1934? A. Yes.

Q. In connection with the proceedings? A. Yes.

Q. All right. What about 1935? A. In 1935 these proceedings were still going on; and in so far as I had to transfer a number of marks out of Germany again.

Q. Was that in connection with the Niessbrauch? A. No. I had made a payment to the Reichsbank of 850,000 marks.

But I immediately sold these marks to British and
1478 other exporters; and so with a slight loss I got immediately rid of this marks obligation.

Q. All right; and in 1936? A. And, pardon me, in 1935, of course, I had several discussions with my father in respect to this Niessbrauch, his renunciation of the Niessbrauch.

Q. The renunciation of the Niessbrauch. Now, in 1936? A. In 1936 the criminal proceedings against Mr. Deku started.

Mr. Burling: Will you fix which Mr. Deku, please?

Mr. Gallagher: This was Mr. Erich Deku, the brother of the Mr. Deku who testified.

The Witness: And I had personally conducted, so to say, the investigation. I wanted to protect my father. My father was about to lose his entire fortune, and I was the main witness in the proceedings.

By Mr. Gallagher:

Q. How much time did you spent in Germany in 1936 in that connection? A. I think I spent there one week, three weeks, two weeks, and four weeks.

Q. That is ten weeks in Germany in connection with the Deku trial? A. Yes.

Q. All right; now 1937. A. And also in 1936 I had 1479 to pay, as you remember, income taxes for the sale of the Opel shares in America. And for tax purposes I had to show what the value of these shares was in Germany.

Q. That is right. A. And, due to American regulations, I had to go back to 1912, or even prior to this date, and I had to spend many weeks to find these old records in various offices and government places.

Q. All right. Now, 1937? A. In 1937, I was witness in a lawsuit against my father. He had acquired a forest, and some twisters, some small hurricane, had blown down part of the forest, and a lawsuit was involved, and I was a witness in this lawsuit.

Q. And how long were you in Germany in that connection

in 1937? A. And I also was interested in the bankruptcy proceedings of the Union Bank, because according to the court records, about six million marks had disappeared, and according to my own investigation about four to four and a half million marks; and I was busy to find out where this money had gone.

Then in 1938, both of these lawsuits—

Q. How much time did you spend in 1937 in connection with both of those matters you have just mentioned?

1480 A. I think I was there twice, two weeks each, or three weeks each.

Q. So it was four to six weeks in connection with those proceedings? A. I would say four to five weeks.

Q. All right. Now, in 1938? A. In 1938 both of these lawsuits, the forest lawsuit, as well as this bankruptcy proceeding, were still going on. And I also spent eight or ten days on the estate of my father.

Q. All right. Now, 1939? A. In 1939 I had a compound fracture, and my Swiss doctors had advised me to see some specialist in Germany, and go to a cool climate. And I spent two weeks and four weeks in Germany.

Q. So that it was six weeks altogether in 1939? A. Yes.

Q. And in 1940? A. That was after the outbreak of the war, and I wasn't there.

Q. And in 1940 is when you came to the United States and have remained ever since? A. Yes.

Q. All right; thank you.

Now, Mr. von Opel, you stated earlier in your testimony that when you left Germany in 1929 you gave notice

1481 to the authorities in that connection. Is that correct? A. Yes, I did.

Mr. Gallagher: I will ask to have this marked.

(The document referred to was marked for identification as Plaintiff's Exhibit 83.)

By Mr. Gallagher:

Q. I will ask if you can identify Plaintiff's Exhibit 83? A. Yes; it is registration of departure, a copy of it.

Mr. Gallagher: I now offer this Plaintiff's Exhibit 83, Your Honor.

Mr. Burling: No objection.

(The document previously marked for identification Plaintiff's Exhibit 83 was received in evidence.)

By Mr. Gallagher:

Q. Now, Mr. von Opel, Mr. Burling wanted to know who was going to testify under oath about "Consortium O". A. I can do that.

Q. All right, and I have several questions I want to ask you about it. At the time he was talking about Consortium O, he prefaced his remarks, on page 968 of the transcript, with discussing Uebersee and its books, and then showed you Defendant's Exhibit 49, a photostat of page 16 of a book.

I will ask you now to look at this book which I will hand you.

1482 Mr. Gallagher: And I would like this to be marked first, please.

(The book referred to was accordingly marked for identification as Plaintiff's Exhibit 84.)

By Mr. Gallagher:

Q. Plaintiff's Exhibit 84, and first I will ask you what this book is. A. This is my private account book.

Mr. Burling: If Your Honor please, I move to strike that, on the grounds that plaintiffs are estopped to make this

point. I believe it will not be denied that more than a year ago Mr. Richard Connor, then in charge of this case for the plaintiffs, and Mr. Gallagher's partner, handed the book to Mr. Baum and Mr. Laufer—

Mr. Gallagher: All books, wasn't it?

Mr. Burling: —asserting that it was a book of account of Uebersee. We have continued to believe that, up until this moment.

Furthermore, this witness himself first identified the record.

But my primary point is that we were told by plaintiff's counsel that this was a record of Uebersee.

Furthermore, the document which we have asked for and have not been given—and I am sure it is because it
1483 is lost, and I don't mean it has been secreted by counsel—recites that Dr. Frankenberg has removed the following books of Uebersee, not of von Opel, but of Uebersee, to be taken to America. And one of the books of account referred to in that letter is this book which is before the witness.

Mr. Gallagher: Your Honor, I can explain that whole situation. It is very simple.

The Court: I understand you take the position that it is a mistake?

Mr. Gallagher: That it is a mistake, and it will show from other pages of the book that it is not a Uebersee book.

The Court: You needn't argue, if you say it is a mistake.

Mr. Gallagher: It is a mistake.

The Court: And I will overrule the objection on the question of estoppel—and, of course, I will permit you to argue the point.

By Mr. Gallagher:

Q. Page 16 of the original of this page photostated by the defense and which is their Exhibit 49—and at that time,

as you will recollect, Mr. Burling was asking you whether or not this figure did not reflect 80 per cent of income, in the amount of two million point six. Will you state what those two pages do reflect? A. That has nothing to
1484 do with income whatsoever. It is a mere summary of all transactions in the United States.

Mr. Burling: I move to strike that answer, on the ground it is not responsive. The question was, what do the pages reflect, and the witness has not stated what the pages reflect, but what they don't reflect.

By Mr. Gallagher:

Q. What does it reflect? A. It is a summary of all transactions in the United States.

Q. And if I understand you correctly, it merely shows all the transactions? A. Yes, just a summary; and the figure, as such, is meaningless.

Mr. Gallagher: I would like to show you this, Your Honor, and then turn to another page. This is just tradings, and the figure here is not a total of anything, but the amounts of tradings, a meaningless figure, as far as that is concerned.

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 85 and ask you what this book is. A. That is a similar book of my own accounts in Swiss francs.

Q. And I direct your attention to page 31 of this book and ask you what the figures on that page reflect.
1485 A. These are transactions in Swiss francs, similar to the dollar transactions in the other book.

Q. This is the same transactions reflected now in francs? A. Not the same transactions—transactions in Swiss francs, whereas this book—

Q. Is in dollars? A. Is in dollars.

Q. I see. I now direct you—

Mr. Gallagher: And first of all, Your Honor, just so you can follow my questions (indicating), these two pages here reflect the transactions in Swiss francs.

Mr. Burling: May I ask, Mr. Gallagher—

Mr. Gallagher: Why don't you come up here, Mr. Burling, and follow us?

Mr. Burling: May I ask if you have had the witness identify this book?

Mr. Gallagher: Yes, that it reflected transactions in Swiss francs, whereas that reflected them in dollars.

By Mr. Gallagher:

Q. I now direct your attention to page 16 of this same exhibit, Plaintiff's Exhibit 85, and ask you what those reflect. A. They show the relationship of my personal account to Overseas Finance Corporation. They show
1486 whether Overseas Finance Corporation was crediting me or debiting me.

Q. It shows how you stand in Uebersee? A. In relation to Overseas.

Q. I see. And is it correct to say that this page 31 in Plaintiff's Exhibit 84 is a recompilation of all the transactions shown throughout this book? A. Yes, it is correct. And all those transactions are reflected in the balance sheet of Overseas.

Mr. Gallagher: (Indicating to the Court): This shows the transactions on these other pages, they are compiled on that page.

The Witness: May I add here that these transactions appear in the Overseas books in the first year, 1932, under the name of Fritz von Opel; in the next year, under the name of Consortium O; and in the years thereafter as Frima Verwaltungsanstalt.

By Mr. Gallagher:

Q. All right. Just a moment. You are getting a little ahead of me.

I now show you Plaintiff's Exhibit 86.

Mr. Burling: I object, unless this witness testifies as a matter of his personal knowledge he knows that is a book of Uebersee.

Mr. Gallagher: This is one of the books produced in response to your motion.

1487 The Court: Ask him the question.

By Mr. Gallagher:

Q. Mr. von Opel, I show you Plaintiff's Exhibit 86. Can you state what this book is? A. That is a book of Overseas.

Mr. Burling: I object, if Your Honor please, on the ground that the witness testified he was not familiar with the books. He has no personal knowledge whether that is a book of Overseas or whether it is a book I wrote last night. He doesn't know anything about it, of his own personal knowledge.

The Court: Find out whether he has personal knowledge of it.

By Mr. Gallagher:

Q. Mr. von Opel, of your own personal knowledge do you know if this is an Uebersee book? A. Mr. Burling asked me to study the matter. So I reconstructed—

Mr. Burling: I object, Your Honor. What this man is doing now is stating that some books the lawyers for Overseas tell him are Overseas books, are Overseas books, and he is so identifying them. He never saw the books until they were in Mr. Gallagher's office.

Mr. Gallagher: That is not correct, Your Honor. We didn't tell him they were Overseas books.

1488 The Court: Don't specify. Just ask him the question and if he knows it, and how he found out,

By Mr. Gallagher:

Q. Do you know these are the Uebersee Finanz-Korporation books? A. They must be the corporation books. They were sent over from Switzerland.

Mr. Burling: I object to that, Your Honor. He has no knowledge.

The Court: I agree with that.

(To the witness): Don't testify, unless you know it of your own knowledge, by having seen it, or some other circumstance, other than a deduction.

By Mr. Gallagher:

Q. Mr. von Opel, can you tell, by looking at pages 70, 71, and 72 of this Plaintiff's Exhibit 86 that these are your transactions in Uebersee and reflect what you did in Uebersee? A. I remember it because it is shown in the balance sheet of Uebersee. I have not seen the books, but I have seen the balance sheets of Uebersee, and the same figures are reflected in Overseas' balance sheets.

Q. The balance sheets, which we will come to, will reflect these figures in the books, and you are familiar with the balance sheets? A. Yes.

1489 Mr. Burling: I move to strike the answer, Your Honor, because obviously the witness has not looked at the figures in detail while testifying. He has said he hasn't seen the books, and the fact that certain figures may appear in balance sheets which are not in evidence, and also appear here, doesn't identify them as books of the plaintiff corporation.

Mr. Gallagher: This is the first time they have raised the contention in all these weeks that this is not an Overseas book.

The Court: I think there have been a good many items of evidence that might have been objected to, that have not been objected to up to now; but I have to rule on the objections when they are made. And if he doesn't know of his own knowledge that this is an Uebersee book, and you want to introduce it as such, I am afraid I will have to get you to identify it from some other source.

The fact that he has transactions in there, doesn't negative the possibility that it might be John Jones' book. We have to have those identifications in court, unless you stipulate on them.

Mr. Burling: May I say, Your Honor, I refuse to stipulate; because as late as yesterday afternoon, we were arguing about whether the books were Fritz von Opel's books or Uebersee's books, and I certainly don't know.

The Court: All right.

1490 By Mr. Gallagher:

Q. Mr. von Opel, let me ask you this: It has been testified proviously in the proceedings, has it not, that you were Frima? A. Yes.

Q. And that Frima owned the stock of Uebersee? A. Yes.

Q. And on page 72 of this book appears the heading "Frima", does it not? A. Yes.

Mr. Burling: I object to Mr. Gallagher's showing an unidentified book of account to the witness and questioning him about it.

Mr. Gallagher: I am trying to identify it indirectly Your Honor.

The Court: That is the trouble. We have to authenticate the book by someone who knows something about it. That is the objection.

Mr. Burling: If Your Honor please, I would like to state for the record that I am not merely disputatious, but I feel very strongly that in a four million dollar lawsuit the plaintiff corporation, if it wanted to make arguments on this book, should have brought the bookkeeper from Switzerland.

Mr. Gallagher: Your Honor, I might say at this point that they have all this man's assets here in this
1491 country. How are we going to get the money to bring people here?

The Court: I cannot take a position as to what you ought to do, or not. All I can do is rule on your objections.

By Mr. Gallagher:

Q. Mr. von Opel, have you ever seen any of the Uebersee books when you were in Switzerland? A. No; only the balance sheets.

Q. You haven't seen the books. You state that you have seen the balance sheets of Uebersee? A. Yes, I have.

Q. I show you Plaintiff's Exhibit No. 87 and I will ask you if you can state what that is. A. That is a balance sheet for the year 1932.

Q. A balance sheet of whom? A. Of Overseas.

Q. I direct your attention to the first page thereof—

Mr. Burling: May I see it, please?

Mr. Gallagher: We have just this sheet. If you will come over here, Mr. Burling, and follow me while I am asking it.

By Mr. Gallagher:

Q. I direct your attention to the first page there under "4", and will you state what that reads? A. Under "current accounts", it shows that Fritz von Opel owes to Overseas an amount of 525,395.50 Swiss francs.

1492 Q. And what was the nature of that debt of yours to Uebersee at that time? A. I don't recollect that.

Q. All right.

Mr. Gallagher: I now offer this in evidence.

Mr. Burling: No objection.

The Court: It is received.

(The document referred to was received in evidence as Plaintiff's Exhibit 87.)

The Witness: I presume it has to do with the payment of capital into Overseas.

By Mr. Gallagher:

Q. And I will now show you Plaintiff's Exhibit 88 and ask you if you can identify that exhibit. A. That is the balance sheet of the next year, of the year 1933.

Q. And I direct your attention to number 4, and will you state what that reads? A. There, under "current account", it shows that Consortium O owes to Overseas an amount of 588,790.55 Swiss francs.

Q. Now, directing your attention back to Plaintiff's Exhibit 87 in this connection, is this the same amount under Consortium O, with the addition of some 13,000 Swiss francs as appeared in Plaintiff's Exhibit 87 under

1493 the heading Fritz von Opel? A. Yes, sir. In the first year it was called Fritz von Opel, and then the next year "Consortium O."

Mr. Gallagher: I now offer Plaintiff's Exhibit 88.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 88.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 89 and ask you if you can identify that exhibit. A. Yes; that is a balance sheet for the year 1934.

Q. I direct your attention to the second page of that balance, under the numeral 3, and ask what the fifth line thereunder states. A. It states that Frima trust fund has claim against Overseas of 6,095,011.85 Swiss francs.

Q. And if I recollect your previous testimony, Frima trust was founded in 1934. Is that correct? A. Yes.

Mr. Gallagher: I now offer Plaintiff's Exhibit 89 in evidence.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 89.)

By Mr. Gallagher:

Q. Going back for just a moment, Mr. von Opel, do you know who commenced the negotiations in Germany
1494 between your father and General Motors, subsequent to October 17, 1931, when you had demanded that General Motors purchase your Opel shares pursuant to the escrow? A. General Motors started that.

Q. General Motors? A. Yes.

Mr. Burling: I object and move to strike, on the ground it is hearsay. The testimony is that Fritz von Opel was in the United States when this happened. He could not have personal knowledge, except hearsay, of what happened in Germany at that time.

The Court (to counsel for plaintiff): Do you want to bring out that he had any personal knowledge?

By Mr. Gallagher:

Q. Did you have any personal knowledge, Mr. von Opel? A. Yes; my father informed me about it, after I came back from the States.

The Court: That is hearsay. I guess I will have to strike it.

Mr. Gallagher: All right; we will drop it, Your Honor.

By Mr. Gallagher:

Q. Now, turning to just one more topic, Mr. von Opel. Will you explain briefly to His Honor the Transdanubia picture during the thirties, up until 1941, and stop at that point? Just explain what had happened and what 1495 Transdanubia was all about, in your own words.

A. Transdanubia was founded in 1935. It was through all the years inactive. I think it was in 1936 when I contacted the Bauxite Trust, asking whether they would operate the mines for me. They put out about a thousand tons of bauxite, and then stopped.

In the years between 1937, up to 1939 or 1940, the property was involved in lawsuits, and no production of any amount was ever started. However, Mr. Koranyi stole considerable amounts of bauxite out of adjoining properties, for which I had to pay damages and even wages.

We produced some bauxite in surface production, a rather small amount, I think about a thousand tons; and then the mine on the surface was exhausted, and my representatives suggested to go over to deep drilling.

In the meantime, we had made some test drillings and we actually found considerable amounts of bauxite. But I did not want to invest any further capital in Hungary, on account of the fact that it was a blocked currency; it was a one-way street. You could bring capital into Hungary, but at the time you couldn't take anything out of there any more.

In this connection I think I have to go in a few words into the problem of blocked currencies. Mr. Burling yes-

terday read out of the World Almanac some figures of free currencies. But those figures are entirely meaning-
1496 less.

For instance, now, the official exchange rate of the British pound is slightly above four dollars for the pound. In reality you can buy in New York any amount of British pounds at three dollars a pound.

The same relates to the German marks. In the World Almanac, the German mark is shown with 40 cents for the mark. In reality you could buy marks with 20 cents, with 10 cents, and at even below this amount.

The whole system of foreign currency control was more or less an economic warfare, comparable to the saying, "Heads I win, tails you lose." You could go into a country, and you had to pay dearly for the currency; but you could not re-transfer it out of the country. And that also became the case with Hungary, and therefore it was absolutely senseless to continue operations there.

Q. All right; just a moment, please.

Now, Mr. Burling asked you, during your cross examination, about Defendant's Exhibit 68 and 69, I believe, which were affidavits executed in the summer of 1941 by you and by Mr. Kresel, in which the affidavit stated that the mines had been leased. A. Yes, sir.

Q. I now show you Plaintiff's Exhibit 90-A, which is the Hungarian original, Plaintiff's 90 being a translation thereof, and ask you if you can identify that letter.
1497 A. Yes; that is a letter I received from Transdanubia in about April or May, 1941.

Q. In connection with Transdanubia? A. In connection with the business affairs of Transdanubia, yes.

Mr. Gallagher: I now offer Plaintiff's Exhibit 90; and I would like to pause a moment while Your Honor reads this, before taking up the discussion afterwards.

(The documents referred to were marked and received in evidence as Plaintiff's Exhibits 90 and 90-A.)

The Court: All right.

By Mr. Gallagher:

Q. Now, that letter summarizes, as I understand it, Mr. von Opel, what the situation was in connection with Transdanubia. A. For the year 1940 and up to the spring of the year 1941.

Q. After you received that letter, did you send a cable to the parties or in any ways communicate with them? A. Yes. In the letter, they asked me to change my mind, and I wired them that I would stick to my decision to get rid of the mine.

Q. Do you recollect the substance of the communication to Transdanubia in response to their letter?
1498 A. Only faintly. They wanted me to reverse my decision, and I told them they should go ahead and either sell or lease.

Q. I show you Plaintiff's Exhibit 91. Can you identify whose writing that is? A. That is my handwriting.

Q. What is this document? Can you state? A. Yes, that is in my handwriting, my draft of the wire to the corporation.

Q. After having read that— A. I have read it.

Q. —was that prepared at the time you sent it? A. Yes; it was my reply.

Q. After having refreshed your recollection from that draft, can you state what the contents were of the cable you sent to Transdanubia? A. Yes.

Mr. Burling: I object on the ground that the document is the best evidence. And I have no objection to the offer of the document.

Mr. Gallagher: All right, sir. We will offer the document.

It is in his longhand writing (indicating). Can Your Honor read it?

1499 (The document referred to was received in evidence as Plaintiff's Exhibit No. 91.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 92, a cablegram addressed to Opel, West Palm Beach, Florida, signed Transdanubia Bauxit, and ask you if you can state what that cable is? A. That seems to be the answer to this wire of mine.

Q. Will you read for the record what that has to say?

Mr. Gallagher: First I will offer the cable, and then will you read it so the record will reflect it?

I offer Plaintiff's Exhibit 92.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 92.)

By Mr. Gallagher:

Q. Now will you read into the record the cable? A. The cable is addressed to me at West Palm Beach, Florida, and signed Transdanubia, and it reads—

Q. What date, Mr. von Opel? A. It is dated May 27, 1941. It reads:

"Two possibilities for solution are offered—

"First, Count Hadik willing to lease mines for five years, rent one pengos twenty-five per ton, makes all investments and takes over contract Giulini. Will start with works at latest 10th June Stop.

1500 "Second, we could raise a loan of forty thousand pengos for three years at 6 per cent. Stop.

"Giulinis feeling inclined to give amnesty for the failure of delivery if we start with it until 15th July. Stop.

"We shall do our best in order to choose the most advantageous form. Should feel obliged to hear your opinion.

"Transdanubia Bauxit."

Q. All right. Just a moment.

After you received that cable, did you send a wire giving your opinion and directions? A. I remember I just repeated my former order.

Q. I now show you Plaintiff's Exhibit 93 and ask you if you can identify what that is? A. That is in my handwriting, a draft in reply to the cable on the other side.

Mr. Gallagher: I now offer Plaintiff's Exhibit 93, which is the reverse side of the cable which is Plaintiff's Exhibit 92.

(The document referred to was received in evidence as Plaintiff's Exhibit 93.)

By Mr. Gallagher:

Q. Will you read for the record what the cable is that you sent? A. It is addressed to Dr. Timar, my 1501 lawyer in Budapest, and it says:

"Suggest accept Hadik offer provided Giulini agrees, and our terragium safeguarded. Hadik ought to guarantee around 40,000 tons yearly. Try to raise terragium or get a true percentage of profit."

Signed "Opel."

I might explain for the record that "terragium" is a fee, a kind of royalty paid to the owner of mineral rights, if a mine is operated by some other party.

Mr. Burling: Mr. Gallagher, may I request that you produce the enclosures which are referred to from Transdanubia of March 12, 1941? The letter discloses on its face that enclosures were with it, and the exhibit you have offered is therefore incomplete on its face.

And I move to strike, unless you do give us enclosures.

Mr. Gallagher: Where are you talking about?

Mr. Burling: The penultimate paragraph, the second sentence—

"From this letter and enclosures you will see that all conditions are fulfilled to meet the contracts and to let bloom the enterprise."

Mr. Gallagher: Your Honor, Mr. Burling is certainly taking a peculiar evidential view. Yesterday he in-
1502 troduced a document filed at the Treasury Department and which referred to six enclosures which he said could not be found.

The Court: Do you have the enclosures?

Mr. Gallagher: No, I do not, Your Honor. This letter is merely a recapitulation of what transpired before.

The Court: The objection will be overruled, and it will be received for what it is worth.

(The letter heretofore offered and received on page 1499 hereof, remains in evidence accordingly.)

1503 Mr. Burling: Will you identify the book.

Mr. Gallagher: I am going to identify the book in just a moment.

By Mr. Gallagher:

Q. I show you Plaintiff's 94, Mr. von Opel, particularly pages 24 and 29 thereof, and ask you whether or not those are the originals of the pages of which Mr. Burling showed you the photostats, and on which, with respect to the years '40 and '41, and of Uebersee, and ask you whether or not you can state what this book is.

Mr. Burling: Is this an original of a Defendant's Exhibit, Mr. Gallagher?

Mr. Gallagher: This is the original of your exhibits, yes.

By Mr. Gallagher:

Q. These are the original pages 24 and 29, Mr. von Opel. Will you state what those pages are? Mr. Burling asked you to refresh your recollection. He showed you two defendant's exhibits which were the photostats of pages 24 and 29 of this Uebersee book, and he pointed out to you that at the end of the year 1940 the balance there showed 102,360 francs, is that correct? A. Yes, on current accounts.

Q. And he showed you from his photostat of 1504 page 29 that that figure had increased to— A. 109,000.

Q. 918.50, is that correct? A. That's correct, yes.

Q. Those are francs, are they not? A. Swiss francs, yes.

Q. Will you explain what that increase was? A. I already mentioned that at the time Mr. Burling asked me, it reflects a payment made on March 10, '41, to the Budapest lawyers, a payment to the amount of about $1,600.

Q. I now show you Plaintiff's 95.

Mr. Burling: I object to counsel showing a book unless he established what the book is, and that the witness has personal knowledge of it, unless it is a book which we have ourselves previously put in evidence.

Mr. Gallagher: We are again faced with the same question, Your Honor, that it is another Uebersee finance book produced in response—

Mr. Burling: Counsel does not know whether it is a Uebersee book or a book which Henggeler picked up in the street of Zurich. Counsel has no personal knowledge of it, nor does the witness.

The Court: As I understand the rule, it is that in the absence of a stipulation, the books have to be proved as authentic books.

Mr. Gallagher: This is a pretty late time, Your
1505 Honor, for them to raise any question about books that we produced in response to Court order several months ago.

The Court: They may be produced. You see, I have to go by the rules of evidence, there is nothing else I can do. The mere production by one party does not authenticate the books unless there is a stipulation or proof of it. I have to sustain the objection.

By Mr. Gallagher:

Q. Mr. von Opel, can you state from your own recollection when that payment was made to—you said it was to Dr.— A. Salusinszky Gyula.

Q. Can you state when in 1941 you made that payment to him? A. I did not make this payment, I already had left at the time. I saw from a slip, from an accounting voucher in the records, that the payment was made to the lawyers.

Mr. Burling: I move to strike any testimony of this witness concerning what he saw on a slip in counsel's office.

The Witness: I personally have no knowledge of it.

The Court: All right. Sustained.

By Mr. Gallagher:

Q. How much was the payment, do you know? A. About 7,000 Swiss francs.

Q. Is that about $1,500? A. About $1,600.

1506 Q. Do you know what the payment was for? A. The lawyers all through the years '39 and '40 received about $200 monthly for legal fees, office rent and expenses connected with operating the office of Transdanubia.

Q. Now, Mr. von Opel, Mr. Burling asked you about the posting of some collateral by Uebersee with a Swiss bank in guarantee of a loan or security for a loan made by Transdanubia in Hungary from a Hungarian bank during the 1930s, and an increase of several hundreds of dollars in 1940. I will ask you whether or not that collateral was returned by the Swiss bank to Uebersee. A. The collateral was released.

Mr. Burling: Will you fix the period.

Mr. Gallagher: In November, 1942.

Mr. Burling: I object to that on the ground that the witness could not have any personal knowledge of that.

Mr. Gallagher: You have already, as I recollect, Mr. Burling, in the course of this cross examination yourself taken the position that the loan was, the cancellation of the security took place in 1942.

Mr. Burling: I am not discussing, if Your Honor please, what my position is, I object to this witness testifying about something he obviously has no personal knowledge of. The testimony is in November, 1942. This witness was in internment camp in the United States, and of course we know what went on.

1507 Mr. Gallagher: Do we understand your position then to be, Mr. Burling, that collateral was posted in security of a loan prior to the war, and that there is nothing further in that respect, that we are to understand the situation is to stand, that the collateral is still sitting in Switzerland?

Mr. Burling: My position, if Your Honor please, is that this witness merely should not be allowed to testify about something which patently he has no personal knowledge, whatever, of.

The Court: I will sustain the objection, if he did not have personal knowledge.

Mr. Gallagher: We will pass that for the time being, Your Honor.

By Mr. Gallagher:

Q. Did you ever receive any income from Transdanubia? A. No.

Q. To your knowledge did Transdanubia ever receive—Uebersee ever receive any income from Transdanubia? A. No.

Q. Did you ever give any orders or direct anybody with respect to the operation of Transdanubia from May, 1931, until the present time? A. No, I did not.

Mr. Ingoldsby: May, 1941.

1508 By Mr. Gallagher:

Q. May, 1941, until the present one. A. '41, yes.

Q. Did you ever give any directions to any agent or authorize anybody to operate these mines for you subsequent to May, 1941? A. No, I did not.

Q. Did you, to your knowledge, did Uebersee ever authorize? A. No, I did not.

Q. Any operation of the mines. I will ask you this, who in Uebersee was the person who handled the Transdanubia situation? A. I was solely handling it, except this credit arrangement was, of course, made through banks.

Q. Directing your attention for a moment back to October 5, '31, did you have any conversations on that date with your father to the effect that you would pre-date the gift agreement when you returned to Germany? A. No, definitely not.

Q. And did you have any conversations with your father on October 5, '31, as to all the advantages that would come to you if you waited until you returned and signed it? A. There was no advantage, there was only a great danger that the loophole in the law would be closed.

1509 Q. Was the gift by your father to you reported to the German authorities? A. Oh, definitely, yes, in various ways.

Q. Will you explain the ways. A. First, within the limit permitted by German regulations, within three months it was reported as a gift and a gift tax of 2,000,000 R.M. was paid for it. This report was filed on January 2, 1932, just at the end of this three-months period. Furthermore, those 600 Opel shares were for every year shown on my father's property tax declaration, and of course after the gift to me it was not shown any more. In addition I could say this gift is, of course, mentioned in my father's last will.

Q. When is the date of the will? A. The last will was filed in 1938.

Q. Turning again to the question of the right to a Niessbrauch, if your father had had any income out of the gift agreement, would that have shown up in the German records somewhere? A. Oh, definitely, that would have shown up in three ways, at least. First, he would have to file any income with the Foreign Funds Control; even a claim to an income he would have had to file. Second, any income out of it he would have to report as an income under the income tax regulations. And then even any Niessbrauch right under German regula-
1510 tions is regarded as property right and reflected in a property tax assessment.

I think I have to make this point clear. For instance, if a person receives, let us say, 5,000 marks out of a niessbrauch, then this figure of 5,000 marks would be capitalized and he would have to declare a property of, let us say, 100,000 R.M., and out of this property he then would have to pay his property tax of about one-half of one per cent.

And, if I may say, as the niessbrauch was conditional niessbrauch, only a niessbrauch conditioned upon the distress of my father, he had not to report this in his property tax declaration.

Q Were you ever directed by your father or mother

as to what you were to do with the proceeds of the gift? A. No.

Q. Were you ever asked by your mother or father to pay them any dividends or any other income? A. No.

Q. Did you ever pay them any dividends or income out of this gift? A. No.

Mr. Gallagher: That is all.

Recross Examination

By Mr. Burling:

Q. Mr. von Opel, you testified on redirect that
1511 you filed Plaintiff's 83-A, which is called in German, abmeldung. A. Yes.

Q. And that is translated as "Notice of Departure." A. Yes.

Q. You filed a statement indicating that you were departing. A. It shows that I am departing to Detroit, United States.

Q. In December, 1929. A. On December 12, 1929.

Q. And it shows you intend to remain abroad how long? A. It doesn't show anything about it.

Q. You know, do you not, that the rule is that, and was at that time, that a German leaving his place of residence for a period of more than a short visit, I think it is more than two months, was required to file one of these even though he intended to return to his domicile? A. Yes, that is possible.

Q. You know that's the fact, don't you? A. I don't know the law in this respect. Everybody changing residence had to report.

Q. You testified concerning your trips into Germany after October 5, 1931, and said that between October,
1931, and the end of '41 you were in Germany 10.1
1512 per cent, is that right? A. Yes.

Q. And that adds up to a total, therefore, of more than a year. Ten percent of ten years, is one year, is it not? A. Yes, mathematically speaking, yes.

Q. You will agree, will you not, that you never indicated at any time during the alien enemy proceedings that you were in Germany any such amount of time.

Mr Ingoldsby: I object to that question, I think it is much too broad, Your Honor.

Mr. Gallagher: We are again back to the point that we do not know what he stated in the missing hearing, either.

The Court: He is asking about his recollection. Do you have any recollection in that regard?

The Witness: I beg your pardon?

The Court: Do you have any recollection as to what you said at the hearings as to the time you were in Germany?

The Witness: At the time of the hearings I was deprived of all my files, I could not reconstruct any movement of mine anywhere. I had no files at my disposition.

By Mr. Burling:

Q. And you were not able to remember that you spent many weeks in Germany in the Deku proceeding, and many weeks on these other proceedings that you have spoken of? A. I think I have stated that I went to
1513 Germany for business reasons, and I think even in the memorandum I wrote, in addition to the hearings I think I filed a memorandum, and in this memorandum I tried to reconstruct as good as I could at the time, without any files and records, for what purposes I had gone to Germany.

Q. You filed that memorandum about a year after the hearing, did you not? A. I think it was in connection with the re-hearing. But I think even for the first hearing a memorandum was filed, if I remember correctly. I think I filed a memorandum for each hearing. Mr. Burling

Q. And at no time did you indicate, did you, that you had been in Germany for a period, or a series of periods, which would add up to a year, isn't that true?

Mr. Gallagher: Mr. Burling, I have to object to that; would not the record be the best evidence?

The Court: If he has any recollection of it, he may answer. I think the record might refresh his recollection.

The Witness: I was asked in a round-about way. As I told you, I had no opportunity to exactly figure that out, and in fact it took me even now with these records about three weeks to reconstruct these exact percentages.

By Mr. Burling:

Q. You identified a book of accounts this morning as your personal book of accounts, is that right? A. Yes.

1514 Q. Is the book kept in your handwriting? A. No, sir.

Q. Who kept it, if you know? A. Mr. Gaeng, the accountant of Overseas.

Q. When did you lay eyes on it for the first time? A. When the books arrived here in the United States upon court order.

Q. You never saw it before you saw it in Mr. Gallagher's office? A. No, I did not.

Q. Will you tell the Court how you know it is your book of accounts if you never saw it before just recently? A. Because it must be my book of accounts, because it can not be an Overseas book of accounts.

Q. It is a deduction of yours? A. It is a deduction, but a very logical deduction.

Mr. Burling: At this point, if Your Honor please, I move to strike this witness's testimony concerning this book.

Mr. Gallagher: They have already introduced photostatic copies from that exhibit on that very point.

Mr. Burling: We did that on representations of counsel that it was a book of accounts of the corporation.

Mr. Gallagher: Mr. Burling, you keep repeating that, that some letter we have not seen made some such statement.

The Court: Let me see. Were you familiar with
1515 the handwriting there?

The Witness: I know Mr. Gaeng's handwriting, certainly.

The Court: You have seen him write from time to time, seen books in which he wrote?

The Witness: No, Your Honor, I wouldn't go so far.

Mr. Gallagher: Your Honor, the books themselves are the best evidence, because they show that they carry in it what his assets are in Uebersee.

Mr. Burling: I submit, Your Honor, a completely unidentified book cannot authenticate itself by what it says about itself.

The Court: Wait just a minute, let me find out from the witness what he knows about it. The handwriting in there is the handwriting of whom, do you say?

The Witness: Of Mr. Gaeng.

The Court: Did he work for you or Overseas, or both, or whom?

The Witness: Since 1931, yes.

The Court: Whom did he work for?

The Witness: He did all the accounting work for me personally, for Frima, and for Overseas.

The Court: What is there in this particular book that you identify as your own that convinced you it's with relation to your accounts and not Overseas'?

The Witness: Because it shows all the transactions
1516 which I had made in the United States and in Switzerland, it reflects those transactions. It shows all those transactions.

The Court: It has transactions personal to you in which Overseas were not in any sense interested?

The Witness: My personal transactions, yes, sir.

The Court: I mean it has some of your personal, in which Overseas had no relation whatever?

The Witness: Yes, that is correct.

The Court: I think that makes it circumstantial evidence.

Mr. Burling: May I inquire—I am not sure the witness understood your question.

Mr. Gallagher: I think he did.

Mr. Burling: May I inquire.

The Witness: May I say a word, Your Honor?

The Court: Yes.

The Witness: Defendant asked not only for the books of Overseas, but as far as I remember also for the books of Frima, and for this reason we gave them my personal books because they are the forerunners of Frima.

The Court: That is another point.

The Witness: For two years.

The Court: The lawyer can argue that later on. The thing we are trying to find out now is the identification of these which you talked from.

Mr. Gallagher: Your Honor, the only relevancy to
1517 this whole thing with respect to these books is simply the mystery that Mr. Burling arose with the word "Consortium O." We are merely explaining it for that purpose. If he wants to strike all his testimony and his exhibits with respect to those two pages, we can dispose of the exhibits. That is the only pertinency.

Mr. Burling: I object to the testimony of this witness, if Your Honor please, that it is his personal book of account. I agree with Your Honor that if there is a transaction of Fritz von Opel which is not a transaction also of Overseas, that would be circumstantial, to indicate it is. I wish to show the book to the witness and ask him to point out the transaction.

Mr. Gallagher: Is that the dollar book or the Swiss book? That is the dollar book.

By Mr. Burling:

Q. I will show you now Plaintiff's Exhibit 85 and ask you to point out the transactions which are personal to you, and in which Uebersee has no interest—had no interest. A. It is better, Mr. Burling, to use the dollar book, because all those dollar amounts were not transferred to Overseas; we started with the Swiss francs amount.

Q. Wait a minute. I want you to show me in Plaintiff's Exhibit 85, which is the book which defendant referred to—

Mr. Gallagher: No, we referred to the dollar book.

1518 Mr. Burling: I am sorry.

By Mr. Burling:

Q. All right, I will show you Plaintiff's 84, which was also referred to by defendant, and ask you to show the transactions in which Uebersee had no interest. A. All those American transactions at the time of '31, all dollar transactions Overseas had no interest in.

Q. Just show me. A. It is the entire book, Mr. Burling.

Q. Show me one transaction in which Uebersee has no interest. A. The entire transactions.

Q. Show me one.

Mr. Gallagher: All of them.

Mr. Burling: I want to see one, please.

The Witness: Take, for instance here, November 9, 1933; there a block of Harvard shares is acquired, 18,160 shares of Harvard Brewing stock.

By Mr. Burling:

Q. And that stock was transferred to Overseas, was it not? A. That stock was transferred to Overseas in 1935, two years thereafter. For the time being it was kept on my books, or Frima's books. You see, these books are the forerunners of Frima. They were acquired through
1519 Ladenburg, Thalmann & Company, New York.

Q. You have no personal knowledge, do you, of whether Uebersee maintained records, tracing the assets which were ultimately transferred to it, all the way back to the original purchase by you? A. Oh, certainly, this book ends up with Frima, and then Frima then transfers everything, sells everything to Overseas in the end of 1935. He can show you every single transaction which you wish to see.

Q. Will you explain, Mr. von Opel, on the assumption that Plaintiff's Exhibits 84 and 85 are your books of account, why there is an account representing 80 per cent of the principal of the gift of October 5 which is labeled Consortium O? A. I explained to you, I never have seen that account. Which figure you mean—you are again referring to this figure of 2.6 million; that is not an income account.

Q. I said principal, now. I am changing my question. I first asked you about income, and you pointed out to me that that could not be income. I now ask you if that is not 80 per cent of the principal. A. No, definitely not. It is the entire hundred per cent.

Q. What is the meaning of "Consortium O"? A. I tried to explain that to you, Mr. Burling, those accounts were in the first year kept under my own name, as you see in the balance sheets of Overseas. In the second year
1520 it was called Consortium O prior to the formation of Frima.

Q. That is my question, why was it called—have you any knowledge, or can you give any explanation as to why it

was called "Consortium O"? A. Because I wished that my name not be shown on the books. In the first year it was shown, in the second year it was called "Consortium O", and the third year it was called Frima. It was the purpose of forming the Frima corporation that my name should not appear on the books.

Q. Why were you anxious that your name should not appear on the books that were maintained in Switzerland? A. For several purposes, Mr. Burling.

Q. What were they? A. Mainly, as you know, at this time I feared some action by the Nazis Government, and I wanted to protect myself as well as I could.

Q. You feared action by the Nazis Government in the year 1932, did you? A. Pardon me, Mr. Burling, in the year '32 it is still under Fritz von Opel, and then it appears under Consortium in '32, and in '33 it is then called Frima. I think that is the sequence, Fritz von Opel, Consortium, and Frima.

Q. Why did you call yourself a syndicate? A. That is not a syndicate. It is called Consortium.

1521 Q. Consortium is a syndicate, is it not? A. It is not a syndicate, it is a consortium. By using another word—

Q. The word consortium means syndicate, does it not? A. Consortium means—I discussed this problem with two Swiss people, they told me that generally in Switzerland any forerunner of a corporation is called consortium.

Q. Did you hear Dr. Frankenberg testify on this subject? A. I think I did.

Q. Did he not say it was a small group, or a syndicate? A. Yes, it generally is called this.

Q. Will you explain why your account was carried under a name which indicates a small group or syndicate? A. Because it was supposed to go into Frima, and Frima, as you know, means—is an agent of mine, an application of mine and my wife's name. It is Fritz-Margot, abbreviated.

Q. The consortium is you and your wife, is that it? A. Yes, the corporation.

Q. No, I am talking about the consortium. A. In a strict sense those assets did, of course, not belong to my wife.

Q. Isn't the consortium you, your father, and your mother? A. No, definitely not.

Q. You are absolutely sure of that? A. Absolutely sure.

* * * * * *

1527 DANIEL GROS, was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Boland: Your Honor, while this witness understands English fairly well, he does not speak English fluently and would like very much to use Mr. Laufer as interpreter during the course of his interrogation. I have spoken about this with Mr. Laufer, and it seems to be agreeable.

The Court: Did you understand the nature of the oath you took?

The Witness: Yes.

The Court: You do not need that interpreted to you in German?

The Witness: No, I don't.

(Accordingly, the witness was examined and testi-
1528 fied through the interpreter, Mr. Joseph Laufer, as follows:)

By Mr. Boland:

Q. Will you state your full name, please. A. Daniel Gros.

Q. What is your business or profession? A. Attorney at law.

Q. And where do you live? A. In Wiesbaden.

Q. Is that in Germany? A. Yes.

Q. What is your age? A. 48 years of age.

Q. Will you describe briefly your education? A. I passed the German examination for admission to universities. I then studied economics and business administration. And I terminated my studies after obtaining a degree in business administration and doctor of political science. I then studied law and took my first and second state bar examinations.

Q. And how long have you been practicing law, Doctor? A. I began practicing law at the end of 1933.

Q. And where did you start to practice law? A. In Berlin.

Q. And how long did you practice in Berlin? A. Until 1943 where I was bombed out completely with re-
1529 spect to my office and my home.

Q. And what was the general nature of your practice? A. I was engaged in general practice with the exception of rent cases, divorce cases, and cases involving traffic violations.

Q. And after 1943 what did you do then, Doctor? A. I moved to Wiesbaden but immediately thereafter was called up for military service.

Q. And how long did you remain in the army? A. Until I was made a prisoner of war.

Q. And when were you taken as a prisoner of war? A. On April 27, 1945.

Q. And how long did you remain a prisoner of war? A. About two months.

Q. And then what did you do? A. I then returned to Wiesbaden and made application to be readmitted to the bar.

Q. And when was this? A. That was in the fall of 1945.

Q. Were you admitted to the bar? A. Yes, I was admitted as attorney and simultaneously as notary public.

Q. And then what did you do? A. I did not engage in the practice of law for the time being, but a judge in the law court of Wiesbaden.

1530 Q. How long did you serve as judge? A. About three quarters of a year.

Q. Who appointed you? A. The minister of justice of Hesse, with the approval of the military government.

Q. Is that the American Military Government? A. Yes.

Q. When you left your practice to enter the army, what did you do with your files and records? A. When I was called up I had already—I had no longer any files. For safety's sake I had removed my files as early as August, 1944, to Belitz, near Berlin.

Q. And after you served in the army did you make any attempt to recover your files and records? A. Yes, but it was difficult. Belitz is situated in the Russian zone of occupation. And I found out that the building to which I had removed my files had been occupied by the Russian Kommandatura after the city had been taken. And I was advised that nothing was left of my files.

Q. Doctor, were you ever a member of the Nazis Party? A. No; for the very reason that I was not a member of the Nazis Party I was appointed a judge, because there were very few judges whose record was unblemished and who were not members of the Nazis Party.

Q. Were you employed as an attorney by Wilhelm
1531 von Opel in the year of 1935? A. Yes.

Q. What was the purpose of your employment, Doctor? A. Wilhelm von Opel and Martha von Opel had made a gift of shares to their son by a gift agreement of 1931.

Mr. Burling: I object and move to strike as hearsay. The witness cannot testify.

The Court: Yes, that is right.

Mr. Boland: Your Honor, this witness has not testified in fact that a gift was made.

The Court: I will disregard that. The Witness has told him.

Mr. Boland: Read his answer back.

(Accordingly, the Witness's last answer was read by the reporter.)

The Witness: And a usufruct was provided therein for the parents, and I was given the job of presenting to the German authorities an agreement between the parties to the effect that this stipulation was nugatory.

By Mr. Boland:

Q. Doctor, what steps did you take in carrying out this assignment of Wilhelm von Opel? A. I first prepared a memorandum of law.

Q. I show you now, Doctor, Plaintiff's Exhibit 96-A and ask you whether or not this is a copy of the memo-
1532 randum to which you have just referred. A. Yes.

Q. And this memorandum was prepared by you? A. Yes.

Q. What was the purpose of this memorandum? A. By this memorandum I tried to become clear in my own mind concerning every possible legal interpretation of the agreement in order to be guided by it with respect to the steps which I would take before the German authorities.

Q. Doctor, directing your attention to the last line of the Exhibit—

Mr. Burling: I object to any reference to the attention of a document which is not in evidence.

Mr. Boland: I offer it.

Mr. Burling: I object to the document, Your Honor, on the ground that it contains extensive hearsay. The witness

has testified that he was retained in 1935. There is a great deal of material relating to facts occuring in 1931 with which he could have no possible personal knowledge. He must be referring to—

Mr. Boland: He has testified as a lawyer he took the gift agreement and made a legal analysis of it.

The Court: Are you going to show that this was submitted to Wilhelm von Opel?

Mr. Boland: I will, Your Honor.

1533 The Court: All right.

Mr. Burling: My argument, Your Honor, is that this man can no more testify to what happened than it would be proper for me to take the stand and testify that in my opinion after studying the case the gift agreement is a sham.

The Court: As I understand it, he is seeking to establish that this opinion was handed to Wilhelm von Opel and he later took some steps in reliance upon it, is that not what you are going to do?

Mr. Boland: Yes, Your Honor, this has got nothing to do with the establishment of the gift agreement as such. We are not using him as a legal witness or as an expert to testify that a gift was in fact established by interpretation.

The Court: That would be proper.

Mr. Burling: If Your Honor would restrict the admission of the document so that it is not evidence of the facts set out in it but merely evidence that it was prepared, I withdraw my objection.

The Court: I certainly will not draw any conclusions as to the fact of the execution of the agreement itself or anything as to which this man had no knowledge. I am admitting it as a memorandum of law that was handed to, that I understand you offered to connect up with the fact that it was handed to the alleged donor, and that he took certain actions in reliance upon it.

1534 Mr. Boland: As a matter of fact, Your Honor, we will bring out, and the defendant well knows, that this was filed in the files of Wilhelm von Opel.

The Court: I will accept it, then, subject to that understanding.

(Accordingly, the document above referred to was marked Plaintiff's Exhibit 96 and received in evidence.)

By Mr. Boland:

Q. Directing your attention to the last sentence of this exhibit, it states, does it not, that a draft of an agreement was attached? A. Yes.

Q. Do you have a copy of that draft? A. No.

Mr. Boland: By the way, I might also state for the record, Your Honor, that that last exhibit was Defendant's Exhibit 31 in the deposition in which this witness was interrogated in Germany by Mr. Baum and Mr. Laufer.

Mr. Burling: That is in no way binding on us here; what we use in cross-examining a witness on depositions is immaterial to the proposition here.

The Court: Well, let's see what is asked about it. If you want to object, I will rule on it.

By Mr. Boland:

1535 Q. Doctor, I will show you now Plaintiff's Exhibits 7-A, 8-A, and 9-A, which have been previously identified as drafts and correspondence of Dr. Hachenburg, and ask whether or not you had copies of these exhibits before you at the time you made your draft of July 27, 1935. A. I can't state that with absolute certainty, but I believe rather definitely that I did not have them; otherwise I would have referred to them in my memorandum in one line or another.

Q. After having prepared the memorandum of July 27,

1935, Doctor, what was the next step you took in this connection? A. Some time later I filed an application with the Foreign Exchange Control office attached to the original treasury office in Wiesbaden.

Q. At approximately what date was this filed, Doctor? A. A few months later.

Q. Doctor, I show you now Plaintiff's Exhibit 97-A, and ask whether or not this is the application to which you refer. A. Yes, that's the one.

Q. And was this prepared by you? A. Yes.

Q. What was the purpose of this application, Doctor? A. I wish to advise by this application the Foreign Exchange Control office of the fact that the parties to
1536 the agreement consider the usufruct provisions as nugatory, and I requested to approve the position of law which I had taken in this application for reasons of legal certainty.

Q. Was this an application for a license, Doctor? A. No, I solely requested a statement of clearance in the interests of legal certainty.

Q. So that it was not an application for a license? A. No.

Q. Was there a draft attached to this application, Doctor? A. Yes.

Q. Is this a copy of the draft that was attached to the application? A. Yes.

Q. What is this draft, Doctor, what does it purport to be? A. This draft is meant to make it clear that the parties, as stated in the penultimate paragraph thereof, have agreed to consider the stipulations of the usufruct agreement no longer effective.

The Court: I think we had better adjourn now until two o'clock.

(Accordingly, at 12:30 p.m. the noon recess was taken, until 2 p.m.)

1537 AFTERNOON SESSION

Thereupon, DR. DANIEL GROS resumed the witness stand and was examined and testified further, through the interpreter, Mr. Joseph Laufer, as follows:

Direct Examination (Resumed)

By Mr. Boland:

Q. Doctor, you have testified, have you not, that the draft attached to Exhibit 97-A was a draft of an agreement in connection with waiving the Niessbrauch? A. I did not say that this draft was a draft for a contemplated waiver of the usufruct, but was a draft of a statement to the effect that the parties considered the usufruct as being no longer in effect.

Q. Was this draft actually signed by the parties, Doctor? A. No.

Q. Did the parties intend to sign this draft? A. No.

Mr. Burling: I object on the ground that it is hearsay.

Mr. Boland: I don't think it is hearsay at all, Your Honor. He was the attorney for these parties.

The Court: What was the question?

Mr. Boland: The question was, did the parties
1538 intend to sign this draft.

The Court: I don't know that he would know their intentions, would he?

Mr. Boland: He was their attorney.

The Court: I don't believe he would know their intention, unless he talked to them.

Mr. Boland: He prepared the draft, Your Honor.

The Court: I don't believe I can let him give his conclusion as to whether they intended to sign it or not, without some facts from which we can draw that deduction.

Mr. Boland: All right, sir.

By Mr. Boland:

Q. What was the purpose of this draft? A. As I already stated, the purpose of this draft was to advise the Foreign Exchange Control authorities of the fact that the parties themselves had agreed to consider this usufruct as pointless.

Q. During the course of your representation of Wilhelm von Opel in connection with this matter, did you have conversations with Wilhelm von Opel? A. Certainly, often.

Q. Did you have conversations with Marta von Opel in connection with this? A. Yes.

Q. Did you have conversations with Fritz von
1539 Opel? A. Yes.

Q. What was the nature of your conversations?

Mr. Burling: I object to that, Your Honor, on the ground that it is clearly hearsay. And I would like to point out in further support of my objection that all three of the persons named have been interrogated, either here or by deposition, called as witnesses by the plaintiff. I do not believe that this witness should be allowed to testify as to what Wilhelm von Opel said to him, when Wilhelm von Opel himself was a witness and could have testified.

The Court: Well, of course, that would be a point you could argue, as to the weakness of his testimony. But wouldn't what he said with regard to his attitude in creating what you call a sham be material, everything he said in connection with it, as a sham when he had no motive, to deceive this Court, for example?

Mr. Burling: I submit, Your Honor, the evidence has established that he did have a very strong motive to deceive the German Government.

The Court: I am talking about this case. It would be a statement accompanying the act, in explanation of his attitude at the time. You can argue the weakness of it, but I think the testimony is proper.

Mr. Boland: Will you read the question, please?

The Reporter (reading): "Question: What was
1540 the nature of your conversations?"

The Witness: The substance of these conversations was that all parties explained to me that they wished to consider the usufruct provisions as pointless.

By Mr. Boland:

Q. In your conversations with Wilhelm, Marta, and Fritz von Opel, did they indicate, did any one of the three indicate to you, that they in fact considered the usufruct as void? A. Yes, sir.

Q. Does this draft reflect that the parties had so agreed? A. Yes; in the penultimate paragraph it is stated expressly—

"We declare that we consider the provisions concerning the usufruct set forth in the gift agreement as no longer effective."

Mr. Boland: I offer Plaintiff's 97.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 97.)

By Mr. Boland:

Q. I show you now Plaintiff's Exhibit 98, and ask whether or not this letter was prepared by you. A. Yes.

Q. Would you state the purpose of this letter?
1541 A. In this letter I express my position with respect to one statement contained in the gift agreement, which reads as follows: "The usufruct in the shares is not assigned."

It is the purpose of my letter to state with legal arguments that by this phrase, according to the provisions of German law, a usufruct cannot be reserved.

Q. Had this question been raised by the German authori-

ties? A. Yes, by Assessor Dr. Rentrop, to whose attention this letter is directed.

Mr. Boland: I offer Plaintiff's 98.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 98.)

By Mr. Boland:

Q. Doctor, I show you a letter that has been marked for identification as Plaintiff's 99 and ask whether or not this is a copy of a letter prepared by you. A. Yes, sir.

Q. And, in substance, is this the same as the application of October 8, 1935? A. Yes, it is the same thing.

Q. And is the distinction that this was sent to the national office of the foreign exchange agency? A. Yes, this letter was addressed to the national office in Berlin, whereas the other letter was addressed to the re-
1542 gional office in Wiesbaden.

Q. The other letter being Exhibit 97 (handing to the witnes)? A. Yes.

Q. Doctor, in the first paragraph of this letter—

Mr. Burling: Will you identify the letter, please?

Mr. Boland: This is 99, Mr. Burling.

Mr. Burling: Thank you.

By Mr. Boland:

Q. In the first paragraph of this letter I notice that a reference is made to a decision of December 13, 1935, of the regional revenue office, Frankfort-on-Main branch, and ask whether or not you have a copy of this decision? A. No.

Q. Do you recall the decision referred to in your letter of February 8, 1936? A. I do not remember with certainty this decision, but I conclude from the contents of

the letter of February 8, 1936, that the decision taken must have been in the negative.

Q. And how do you come to that conclusion, Doctor? A. Because otherwise the statement of February 8, 1936, would have been unnecessary.

Q. And that is the reason, is it, Doctor, you wrote to the national office of the Foreign Exchange Agency?

1543 A. Yes, sir.

Q. I show you now, Doctor, Plaintiff's Exhibit 100, and ask whether or not this is a copy of a letter prepared by you. A. Yes.

Mr. Boland: It is Defendant's Exhibit 32 in the Wiesbaden depositions.

Mr. Burling: Thank you.

By Mr. Boland:

Q. Does this letter contain in substance the same arguments which you used in your letter of October 8, 1935, Plaintiff's Exhibit 97? A. Yes, sir.

Mr. Burling: I object to this. Again, clearly, it is a recital not only of legal arguments, but of facts of which this witness could not have any personal knowledge.

If it is stipulated it is not offered for the facts cited, but merely to show that the letter was sent, I have no objection.

Mr. Boland: We will stipulate that it is not offered other than to establish the fact that the argument was prepared by Dr. Gros and sent to the addressee of the letter, for the purpose of getting rid of the Niessbranch.

Mr. Burling: Thank you; that it fine.

Mr. Boland: Where do we stand, Mr. Reporter?

1544 The Reporter (reading): "Question: Does this letter contain in substance the same arguments which you used in your letter of October 8, 1935, Plaintiff's Exhibit 97?

"Answer: Yes, sir."

By Mr. Boland:

Q. I note, Doctor, that this letter was addressed to the tax revenue office in Wiesbaden. A. Yes, that is correct.

Q. Was this letter actually sent to the tax office in Wiesbaden? A. I have, of course, no immediately recollection of its having been mailed; but if I see a letter from me, I assume that in the ordinary course of business this letter was mailed.

Q. What was the purpose of sending such a letter to the tax office, Doctor? A. The collector's office also was concerned with the usufruct in connection with a possible taxability of income derived from it, and the tax office had inquired of Wilhelm von Opel whether or not he had received any income from the usufruct.

Moreover, as I note from the contents of the letter, it was important for the collector's office with respect to the property tax.

Q. Doctor, did you take any action with the
1545 Reichsbank in connection with obtaining approval of the waiver of the Niessbrauch? A. Yes.

Q. When? A. At about the same time at which the collector's office addressed its inquiry to Wilhelm von Opel, an inquiry was made by the regional office of the Reichsbank in Wiesbaden.

Wilhelm von Opel advised me of the fact, and I advised him what to reply. And, as I recall, I sent him a draft of a letter.

Q. And was the letter in the nature of advice to Wilhelm von Opel? A. In this letter I suggested to Wilhelm von Opel how he should write to the regional office of the Reichsbank in Wiesbaden.

Q. And what was the general nature of your advice? A. The substance of my advance followed precisely the line which I had followed previously with respect to the col-

lector's office and the office of Foreign Exchange Control. And I remember that at the end of the draft, I had added:

"For any further information, please inquire of Dr. Gros"—that is, speaking to the Reichsbank branch—"inquire of Dr. Gros, attorney at law, who is handling the matter."

Q. Doctor, did the Reichsbank ask you for any
1546 information concerning this matter? A. No; but I heard that the customs investigation office in Frankfort-on-Main had undertaken investigations on its own concerning this matter.

Q. Did the Reichsbank directorium in Berlin ask you for any information? A. No. I merely received one day a telephone call, according to which a certain Mr. Wilhelm, director of the Reichsbank, wished to talk to me in connection with the Opel matter.

Q. Did you ever go to see Director Wilhelm in connection with this matter? A. Yes, sir, several days after the telephone call.

Q. What was the date of your first visit to Director Wilhelm? A. I cannot immediately remember the date. But I will remember it as soon as my memory will have been refreshed by a letter which I addressed to Wilhelm in connection with the matter.

Q. I show you now Plaintiff's Exhibit 101.

Mr. Barling: By my silence, Your Honor, I don't want the record to indicate that I agree to the admissibility of this document.

Mr. Boland: I am merely identifying it. I have three documents to offer, as I recall.

1547 By Mr. Boland:

Q. I ask you whether or not this is a copy of your letter to which you have just referred? A. Yes, sir.

Q. Does this letter refresh your memory as to the date

of the conference with Director Wilhelm of the Reichsbank? A. Yes; I note from the letter that the conference must have taken place on June 27, 1935.

Q. What was the nature of your conference with Director Wilhelm?

Mr. Burling: I object, Your Honor. This is clearly hearsay, what some person named Wilhelm—not Wilhelm von Opel, but Wilhelm of the Reichsbank—said to this man.

And furthermore, if Your Honor please, the testimony of Wilhelm has been taken in this case and that is the proper way to find out what Wilhelm said.

Mr. Boland: Your Honor, if you will bear with me just a minute, in the first instance, we are not offering what Director Wilhelm said to Dr. Gros for the truth of what he asserted, but merely for the fact that he did say it, true or false. And the second statement is that there was a deposition taken from Director Wilhelm; he was brought here to Washington by the Government and subjected to examination; and we intend to make him a witness in this case and read in portions of his deposition. And
1548 this is merely to corroborate things in his deposition.

The Court: What do you seek to develop?

Mr. Boland: That Director Wilhelm, upon the presentation of Dr. Gros' application for approval of the parties waiving all rights in connection with the gift agreement, had admitted he had no legal basis upon which to oppose their doing exactly what they did.

And we think it is important, lest the Government argue it would be impossible for the parties to have agreed to waive, in the face of potential criminal prosecution under the Exchange Control regulations; and this would establish there was no fear of that.

Mr. Burling: That is my point, Your Honor—it is offered to establish that Wilhelm said this.

Mr. Boland: This is in corroboration of their own witness.

The Court: We can take it in turn.

Mr. Burling: The fact is that hearsay evidence is offered to corroborate another witness, and incidentally the deposition of Wilhelm will be contrary, I think, to what this witness will say; but you can't corroborate a witness by hearsay evidence. There is no such exception to the hearsay rule.

I submit this man can say what he said to Wilhelm, but it is pure hearsay for him to say what Wilhelm said to him.

1549 The Court: The only way in which he could say it, where it would have any relevancy, would be if it was communicated to any of the parties and they took any action in regard to it, or failed to take any action in regard to it.

Mr. Boland: It certainly was communicated to the parties, to all the parties to this agreement, and they were thoroughly cognizant of the fact that the German agencies would take no action on the waiver of the rights under the agreement.

The Court: Let me see if I comprehend the drift of this testimony. I want to be sure I do. You are seeking to establish that this Dr. Gros was employed for what purpose?

Mr. Boland: He was employed by Wilhelm von Opel for the purpose of obtaining the approval of the German Government to a waiver of whatever rights the father and the mother had retained in the gift agreement.

The Court: And he then wrote certain officers, and in the course of writing them he submitted the document which I think he didn't sign? Is that right?

Mr. Boland: I think that is right. And he also stated the parties had in fact agreed to a waiver of whatever rights they have.

The Court: Does this have any relation to his failure to sign? Is that what you are talking about?

1550 Mr. Boland: No, it doesn't, Your Honor. It isn't related to the failure to sign, at all.

The Court: He tells them what another man says. What relevancy does that have to any action they took? That is what we are trying to get at. Of course, his opinion is not controlling on me, if that is what you are offering it for.

Mr. Boland: No, Your Honor. I am offering it for the purpose of showing that the parties, as a result of the German inaction, the German Government's inaction, and the application for approval of the waiving of their rights, that the parties relied upon the fact that there was no further action to be taken by the German Government—

Mr. Burling: I will stipulate the German Government took no action with respect to this waiver or alleged waive

Mr. Boland: And also that Mr. Fritz von Opel governed his actions accordingly.

The Court: Your point is that in so much as this Director Wilhelm, of the Reichsbank—

Mr. Boland: Yes, Your Honor.

The Court: And what position had the Reichsbank?

Mr. Boland: Comparable to the Federal Reserve Board.

Mr. Burling: We contend his opinion had no effect whatever.

The Court: You expect to establish that this
1551 Reichsbank had a national position, and that he was an officer of the German Government? Is that right?

Mr. Boland: It is established in the deposition, upon questioning by Mr. Baum. He was their witness, and we are going to read that into the record.

The Court: And inasmuch as he, rightly or wrongly, took the position that no affirmative action was necessary by way of relinquishing this usufruct, that he took no action? Is that it?

Mr. Boland: Yes, sir.

The Court: I think it would be admissible.

Mr. Burling: If Your Honor please, my objection goes to hearsay. Why should this witness be allowed to testify

what Wilhelm said? Wilhelm himself has testified to what he said.

The Court: Well, it would be corroborative of it.

Mr. Burling: Isn't it hearsay, even if it is corroborative?

The Court: No, I don't think so. It is a fact. If somebody fails to take an action that he might otherwise take, it is competent. I might fail to take any action whatever, if I have certain information given to me by an official of the Bureau of Internal Revenue. And I might very well take different action if I did not have it.

The fact of the communication of that is a fact
1552 which is both relevant and material, I think. I will permit it, subject to your objection, and let you argue the deposition conflicts, if it does.

Mr. Boland: All right, Your Honor.

The Court: Tell him he may answer the question.

Mr. Boland: Will you please read the question, Mr. Reporter?

The Reporter (reading): "Question: What was the nature of your conference with Director Wilhelm?"

The Witness: Wilhelm referred to the position I had taken in the Niessbrauch matter, the usufruct matter, and then told me that their own lawyers had examined the matter and had reached the conclusion that my position was to be approved and that therefore my position was to be shared by their own lawyers, and that therefore no claim existed within the terms of the Foreign Exchange Control provisions of Wilhelm von Opel against Fritz von Opel.

After that, he said "Let's leave the legal consideration aside." And then he made lengthy statements to me, pointing out that in view of the very tight foreign exchange control position of the German Reich, Fritz von Opel should feel inclined voluntarily to make contributions of foreign exchange to help alleviate the emergency of the German Reich.

By Mr. Boland:

Q. Did you communicate the results of your con-
1553 versation to Wilhelm von Opel? A. Yes, just in this letter of July 7, 1937.

Q. And the purpose of this letter of July 7, 1937, is what, Doctor? A. This letter had, in the light of my assignment and in the light of my situation, the extremely important purpose of putting on paper the approval of the Reichsbank of my legal position.

Q. And did you forward a copy of this letter to Wilhelm von Opel? A. Yes, sir; this letter was found in his files.

Mr. Boland: I offer Exhibits 98, 99, 100, and 101.

(The documents referred to were thereupon received in evidence as Plaintiff's Exhibits 98, 99, 100, and 101.)

By Mr. Boland:

Q. I show you now a paper identified as Defendant's Exhibit 32 and ask whether you are able to identify this document? A. Yes; this is a copy authenticated by the authorities, of the last will of Wilhelm and Martha von Opel.

Q. Do you know who drafted this will, Doctor? A. Yes. I drafted it, except for the codicils which were added subsequently.

Q. And what was the date on which you drafted
1554 this will, Doctor? A. The date was November 20, 1938, as I note from the copy of the will. I directly remember it was in October or November of 1938, because at that time I was present at the hunting lodge at Wilhelmsruhe, on the Lake of Moener.

Q. And who was present at the time the will was drafted? A. Wilhelm von Opel, Marta von Opel, Fritz von Opel, and I myself.

Q. At the time of the drafting of the will, was there any conversation in connection with the gift agreement of October 5, 1931? A. Yes, sir, for the reason that in connection with this gift agreement steps had to be taken with respect to the accounting as between son and daughter.

Q. Were there any conversations in connection with the rights of Marta or Wilhelm von Opel under the Niessbrauch? A. No.

Q. Doctor, do you know an Erich Deku? A. Yes, sir.

Q. Do you know a Rudolf Deku? A. Also.

Q. Do you know a Graf Schwerin? A. Likewise.

1555 Q. Do you know a Major Mudra? A. Likewise.

Q. Doctor, Rudolph Deku testified here the other day in this case, and he testified as a witness for the defendants. He stated that he had had dinner but once in his life with Wilhelm von Opel. He stated further, in cross examination, that you were not present at that dinner.

Do you ever recall having had dinner with Wilhelm von Opel at a time at which Rudolf Deku was present? A. Yes, sir, in the Neva Grill in Berlin.

Q. And in what year did this dinner take place? A. It must have been in the year 1934.

Q. Do you remember who was present at that dinner? A. All those persons that were mentioned before as being known to me, and in addition myself, and Wilhelm von Opel.

Q. In other words, you mean that Erich Deku, Rudolf Deku, Graf Schwerin, Major Mudra, Wilhelm von Opel, and yourself were present? A. That is correct.

Q. How do you remember this dinner, Doctor? A. Mainly for the reason that I never attended another dinner with the same guest list, and also for the reason that I didn't attend another dinner at the Neva Grill.

Q. What was the nature of the conversation during the course of the dinner, Doctor? A. I have no imme-

1556 diate recollection of the conversation, and I assume that it slipped my memory, as thousands of others, because nothing worthwhile was being said.

Q. Doctor, Rudolf Deku stated, at page 844 of the record, in answer to the following question by Mr. Baum:

"Now, Mr. Deku, will you please tell us in words or substance what you recall was said by Mr. Wilhelm von Opel during the course of this dinner?"

Which answer Mr. Rudolf Deku stated as follows:

"As a result of my questions, and as a result of the questions of the others, the discussion arose over the payment of a fine of three and a half million marks by Wilhelm von Opel.

"We were astonished that he had submitted to such a severe fine, without fighting through a regular procedure.

"And we asked him how it came about, how he happened to do that.

"He stated that it was well worth three and a half million marks to have his assets outside of the German locked safe."

Now, Doctor, do you remember Wilhelm von Opel's having made these statements during the course of that dinner? A. No; I do not remember that. But I would
1557 like to add that if such a statement had been made by Wilhelm von Opel, it would have fixed itself upon my memory.

Q. Referring to page 842 of the record, in referring to a trip which you took to Switzerland, Mr. Deku stated the following:

"Mr. Gros was evidently dissatisfied with the results of his conversation with Fritz von Opel, and he stated that in his opinion it would be difficult for Wilhelm von Opel to prove to the German authorities the bona fide character of the agreement which he had concluded."

The question is, did you ever make that statement to Mr. Rudolf Deku? A. It is wholly impossible that I made such a statement, because it is in direct conflict with the

basic position which I have always taken in this matter; and, in fact, I advised at this time not to submit but to go to court in connection with it.

Q. Doctor, was your deposition ever taken in connection with this case? A. Yes, sir, in September of last year in Wiesbaden.

Q. Wiesbaden, Germany? A. Yes, sir.

Q. And were the documents which you identified here today presented as exhibits during the course of that deposition?

1558 Mr. Burling: I object, Your Honor, on the ground that it is irrelevant.

The Court (to counsel for plaintiff): What is the point?

Mr. Boland: The point of this, Your Honor, is to establish that during the course of the deposition taken of Mr. Gros by Mr. Baum and Mr. Laufer, in Wiesbaden, Germany, at which time the very documents we have here in this court that this man has identified today were put in evidence and questions asked about them, that during the course of his deposition Wilhelm von Opel was sitting right next to him, and if they had any questions to ask about the waiver, they could have asked them then and there. And we think it is very material to get that in evidence.

Mr. Burling: I object very strongly, if Your Honor please. If the testimony is that Wilhelm von Opel waived something, and Wilhelm von Opel's deposition indicates the proper party to testify about the waiver is Wilhelm von Opel, I think it is argumentative, to which we could respond at the proper time, that it is not the proper thing to think up this waiver story after Wilhelm von Opel is dead.

Mr. Boland: They were there, Your Honor. Wilhelm von Opel was there during the course of this deposition about the waiver.

1559 The Court: And you want to draw some inference from the fact that they didn't question him about it?

Mr. Boland: I want to counteract any inferences they are drawing about the fact that there is no questioning of Wilhelm von Opel about the waiver.

Mr. Burling: We agree Wilhelm von Opel was sitting there. But when they came to taking the deposition of Wilhelm von Opel, they forgot to ask him any question about waiver.

Mr. Boland: We will stipulate that at the time the deposition was taken of Dr. Gros, the documents he has identified today were identified in the course of the deposition, and during the course of his deposition Mr. Baum and Mr. Laufer were present; and, further, that Wilhelm von Opel was present during the course of the deposition.

Mr. Burling: I will stipulate if you will join in the stipulation that neither Maria von Opel nor Wilhelm von Opel was asked a single word about waiver, when their deposition was taken.

Mr. Boland: You can make your argument for the record on that. We won't stipulate on that.

The Court: Well, you stipulate the facts as to the presence of the parties, and the presence of the documents, and the conclusions can be drawn later on.

Mr. Burling: All right, sir.

1560 Mr. Boland: Yes, sir. With that understanding, Your Honor, that is all we have on direct.

Cross Examination

By Mr. Burling:

Q. As closely as you can fix the date, when was this dinner you have testified to at the Neva Grill? A. From immediate memory I cannot fix the date any further. It was an important prop to my memory that Rudolf Deku fixed the date.

Q. Now, Dr. Gros, this is a very complicated cross examination that I have to conduct, and I request you to answer

my questions as directly as possible, and not volunteer or make arguments or make comments about the reason for your answers. A. Does that refer to the last answer which I have given?

Q. Yes; I want the best date you can possibly give, and nothing else. A. I believe to be required to add this in order to make a truthful statement; otherwise my answer would have given rise to misunderstanding.

Q. You are required, on the contrary, to answer my questions and say nothing else at this time.

Mr. Boland: Your Honor, I think that the witness has indicated he doesn't recollect this, because Rudolf
1561 Deku was the one who fixed the thing in his memory, and he doesn't remember specifically, and I don't see how a man can be required to do that which he cannot do.

Mr. Burling: Then he can say it; but I don't want argument which can go on for days.

The Court: I think he has the point now, and let us see how we can go on.

By Mr. Burling:

Q. Give us the best statement you can as to when the dinner at the Neva Grill took place. A. I canot make a further statement—a more definite statement.

Q. Did it take place between 1920 and 1940? A. I already stated it took place in the year 1934.

Q. Did it take place in the summer of 1934? A. If I examine my conscience closely I must say that any more definite statement as to the time would divorce me from the truth.

Q. Well, we certainly don't want to do that, Doctor.

Mr. Boland: We agree.

The Witness: I take that for granted.

By Mr. Burling:

Q. Do you not recall that the dinner at the Neva Grill took place shortly after a summary judgment had been entered in the Wilhelm von Opel proceedings? A.
1562 I have no recollection of the fact that there was any connection between the summary order and the date of this dinner.

Q. How many times have you been in the Newa
1563 Grill? A. As I stated already, I have been there only once, and it was on the occasion of that dinner.

Q. And is it not true that the Newa in the 1930's was the most fashionable, or one of the most fashionable restaurants in Berlin? A. I don't know whether you can put it that way. At any rate, is was a rather small establishment.

Q. It was a very expensive restaurant, was it not? A. It belonged to the group of the more expensive establishments. I did not then, and am not now, familiar with the very expensive restaurants.

Q. And the dinner took place in a private dining room, did it not? A. I cannot remember that any more.

Q. And you were invited to this dinner by Wilhelm von Opel, were you not? A. How it happened that I was present at the dinner, I cannot state any more today.

Q. Don't you recall it was a dinner in the nature of a celebration given by Wilhelm von Opel? A. No—celebration, what for?

Q. For the success in getting his money out of Germany. A. No, during this time I have only seen him complaining bitterly about the fact that he was pressured by
1564 the German agencies.

Q. In 1935, I believe you testified you were retained by Wilhelm von Opel in relation to a usufruct matter? A. Yes, that is correct.

Q. And you are familiar, are you not, with the applicable law in Germany relating to usufructs? A. Yes, at

that time I was quite familiar with all the details of these provisions, and even today I am familiar with the basic principles thereof.

Q. And it is true, is it not, that a usufruct, as opposed to a claim to have someone create a usufruct, is an in rem right? A. No, that is not correct, because the term "usufruct" is used even by lawyers in different meanings.

Q. I am going to show you the German civil code, and ask you to point out any chapter relating to a usufruct other than a right in rem. A. I assume that this is not seriously meant, because otherwise it would take too much time.

Q. I assure you, Doctor, it is seriously meant, because I am advised by my experts that there is no such reference in the code anywhere, and I ask you to point one out to me. if there is one. A. In order to do this properly, I will just as a matter of precaution check up in the index.

1565 Mr. Boland: Your Honor, while he is checking, I don't want the record to indicate that because he may or may not find something in the German code that the position of the plaintiff is unwarranted, or the position of the defendant in this case. He is not qualified in German law.

Mr. Burling: Your Honor, I am merely laying a foundation for attacking the testimony of this witness with respect to the termination of the usufruct. I am not trying to make him a general expert. I am merely laying a foundation for an attack on his testimony relating to the termination of the usufruct, which we contend never was terminated at all, if it ever came into existence; that is, if this was not a sham transaction from the outset.

Mr. Gallagher: Could you clarify that? You mean it was not terminated because it did not receive the approval of the Germans?

Mr. Burling: No, no, my contention, which I am coming to, is that it was impossible validly to waive a usufruct or

even a claim for a usufruct once it was created, without a license, and a license was never issued, or at least, there is no testimony from Mr. von Opel that a license was issued.

The Witness: May I hear the question again?

(The pending question was read by the reporter.)

The Witness: No, I think I must agree with you that the usufruct in a technical sense appears only as a right
1566 in rem in this code.

By Mr. Burling:

Q. And that is the code in which the German civil law is embodied, is it not? A. Yes, since 1900.

Q. Now, Doctor, what are the conditions required to create a valid usufruct? A. In order to avoid misunderstandings, shall I take the word "usufruct" to mean a right in rem?

Q. Yes, as defined in the code. A. The requirements are basically the same as those required for the creation of any other right in rem, that is, a meeting of the minds and delivery, or, in the place of delivery, a substitute for such delivery.

Q. And once there is an agreement that a usufruct is to be created, then all that is left undone is the delivery of possession to the usufructuary, is that right? A. That is correct, if the question is put in an abstract fashion, because otherwise the particular circumstances must be taken into consideration.

Q. Suppose we take these hypothetical circumstances. "A" gives legal title to property to "B", and it is agreed that "A" is to keep the usufruct, and "B" takes the property and sells it, and puts the proceeds in a safe deposit box, and delivers the key to that box to "C". And
1567 "A" and "C" have agreed that "C" is the agent of "A", and "B" gives the key to "C", and at that time

"C" agrees to hold the key in his capacity as "A's" agent.

Under those circumstances, the delivery of the key would constitute good delivery to the usufructuary, and a valid usufruct would arise, is that not so? A. I must state that my intellectual capacity didn't quite catch up with the hypotheses presented to me, and therefore I would like to put them down again.

Q. Isn't this pure sham, Doctor, aren't you just acting? A. I don't know how I gave cause for such a statement on your part, and I reject it.

Q. Haven't you been dealing with precisely the hypothesis I put to you in this very matter ever since 1935? A. Not so.

Q. Don't you know that Fritz von Opel swore in 1935 that he put the shares of Uebersee in a box, and took the box and gave the key to the box to Hans Frankenberg as his father's agent?

Mr. Gallagher: Your Honor, I will have to object. The testimony of Mr. von Opel is not to that effect. The record reflects that Mr. von Opel gave him a key, and subsequently, the following year, asked him to be the agent. You constantly, Mr. Burling, change the record in that respect.

Mr. Burling: May I state to Your Honor that Mr.
1568 Gallagher has made an unwarranted assertion, that my question is entirely correct, that the affidavit of Fritz von Opel says in the most clear possible language that he gave the key to Hans Frankenberg as agent for his father.

The Court: There is no use of arguing about it. He is asking the question as to whether this witness recalls that as a fact. If that's the wrong hypothesis, you can bring it out later on.

He asked him if he doesn't recall that was the fact.

Mr. Burling: I asked him if he didn't recall that Fritz von Opel swore to that?

Mr. Gallagher: Just for the purpose of the record, Your

Honor, even the affidavit itself, which I submit should be read on this point, was not given to him for that purpose, but said it was held for that purpose. The key was held by—

The Court: Let us not waste too much on this. What he is trying to develop is whether the witness knows what he is talking about. Let us not spend too much time on it. I am going to let you argue the significance of the testimony at the proper time. What you are trying to establish is that he is familiar with the hypothesis.

Mr. Burling: That is correct, Your Honor.

The Witness: I learned about this in the course of this proceeding.

By Mr. Burling:

Q. Don't you understand my hypothesis? Don't
1569 you understand that in my hypothesis Wilhelm is "A", Fritz is "B", and Frankenberg is "C"? A. I have made notations so that I will better understand it, and I request you to continue.

Q. All right, my question is, on the hypothesis I gave you, the fact that "C" holds the key as agent for "A" would be a good delivery to "A" for the purpose of creating a usufruct. A. In this abstract fashion of putting the question, nothing reliable can be stated.

Q. Well, will you answer the question? A. It is impossible to answer the question.

Mr. Gallagher: Mr. Burling, I suggest you now state the hypothesis, so he can write it down. I think it will save time. I think he has forgotten the hypothesis.

Mr. Burling: All right.

By Mr. Burling:

Q. The hypothesis, once more, is: "A" gives legal title of property to "B", and "A" and "B" agree that "A" is

to retain the usufruct. And "B" places the property given in a safe deposit box. And "A" and "C" agree that "C" shall act as the agent of "A". And "C" then holds the key to the safe deposit box as agent for "A", having previously been given the key by "B".

And "B" and "C" agree that "C" is to hold the key as agent for "A". A. From the many assumptions
1570 that were made I can see that an agreement of the parties is present, and also something that can be described as a delivery or substitute for delivery, which would bring a usufruct into being, in an abstract fashion.

Q. But nevertheless valid?

Mr. Gallagher: I just want to ask one question. That hypothesis, if I recollect correctly, stated that "A" and "C" had agreed, "A" being the father, and "C" being Frankenberg, is that correct?

Mr. Burling: Yes, you heard correctly.

The Court: But nevertheless valid, he asked.

The Witness: Certainly.

By Mr. Burling:

Q. Once a usufruct is established under German law, it can be terminated, can it not, by the act of the usufructuary? A. Certainly, the niessbrauch can be terminated.

Q. And by the act of the usufructuary? A. I believe if the whole thing is to be waived, a consent of the other parties is required.

Q. And when a usufruct is waived, and the title holder agrees, then the beneficial interest in the property passes to the title holder, is that right? A. I do not understand that.

Q. Well, supposing that I have the usufructuary
1571 interest in a thousand hectare farm; as long as I have the usufruct, I get all the crops that grow on that farm, don't I? A. Yes.

Q. And if you held the legal title, you wouldn't get the crops until the usufruct was over, would you? A. Certainly.

Q. And if I waive my usufructuary interest, and you consent to it, my right to the crops moves to you immediately, does it not? A. You cannot put it in those terms under German law, but in substance that is the case.

Q. And so a waiver of a niessbrauch or usufruct is a disposition of a property right, isn't it? A. Yes, because the term "niessbrauch" itself is a right in rem as we use the term at the present time.

Q. Is it not true that under German law after August 1, 1931, a disposition of a right or claim for foreign exchange could not be made without a license from the Reich foreign exchange control office? A. I do not know whether you can put it in that fashion, I would have to know what technical term the law uses in order to give an answer to that.

Q. Didn't you ever look up the law on this point? A. Certainly, at the time when I handled the matter,
1572 I knew it in my memory, but I am not a peripatetic library.

Q. Fortunately, we have a library here, Doctor.

Mr. Burling: (To the clerk) May I have defendant's 31, please?

The Clerk: That I don't think has ever been entered, that is the Reichsgesetzblatt. That was marked for identification. I don't think it ever came into my exhibits. I have it so marked, as marking for identification.

By Mr. Burling:

Q. I show you a photostatic copy of Pages 421 to 425 of the Reichsgesetzblatt for August 1, 1931. This is another copy of defendant's 31.

Mr. Boland: Is this the currency laws?

Mr. Burling: Yes.

Mr. Boland: No objection.

By Mr. Burling:

Q. Will you look at section 12? What does that provide with respect to foreign exchange transactions? A. It is provided that transactions which violate the provisions of sections 3 to 11 are void.

Q. Will you look at sections 3 and 4, and see what transactions are dealt with. Rather, Doctor, will you look at paragraph 3, and see if my translation is correct?

"Foreign currency, or claims payable in foreign currency
which have been acquired otherwise than in accord-
1573 ance with section 2 may be transferred only under
a license in writing of the Office of Foreign Control, except where such assets are sold to the Reichsbank, or one of the banks provided for in Section 2, Paragraph 3.

"4. Foreign securities not listed on a German stock exchange may not be acquired for a consideration except under a license in writing of the Office of Foreign Exchange Control. Foreign securities not listed on a foreign stock exchange may be transferred only under a license in writing of the Foreign Exchange Control, except where the securities are sold to the Reichsbank or one of the banks provided for in Section 2, Paragraph 3."

Is that correct? A. Yes.

Q. In the light of this proclamation, could a usufruct validly created in foreign securities be waived without a license? A. Section 3 refers to foreign means of payment or claims; Section 4 to securities. If the law is construed literally, then it must be stated that a niessbrauch is not included in these provisions, for it quite evidently is neither a foreign means of payment, nor a claim, nor a foreign security. The niessbrauch is a right in rem from which possibly such foreign securities, claims of foreign currency, may accrue.

1575 If they so accrue, then of course they constitute foreign claims, foreign-means of payment, and securities which are included in Sections 3 or 4.

Q. On the hypothesis that you have a usufruct presently in foreign securities, was it not necessary to have a license in order validly to waive the usufruct? A. I have in my legal memoranda taken the position because of the highly personal nature of the usufruct, such a license was not required, but I would like to add that one could be of a different opinion, if one does not construe the provisions literally, but keeps in mind the economic purpose of the law, and wants to include the economic consequences resulting from such transactions.

The Court: Mr. Burling, you will be some time longer, won't you?

Mr. Burling: I am afraid so.

The Court: As I told you yesterday, I had to make an appointment yesterday. I will have to adjourn at this time. We will go until ten o'clock tomorrow morning.

(Accordingly, at 3:45 p. m. the trial was adjourned until 10 o'clock the following morning, Thursday, December 23, 1948.)

* * * * *

PROCEEDINGS

1579 Mr. Burling: Your Honor, may the record show that I have furnished plaintiffs with all of the statements or papers other than my own trial brief which we have, relating to Mason Houghland, except FBI reports.

Mr. Gallagher: We acknowledge the receipt of those from Mr. Burling, Your Honor.

The Court: All right.

Whereupon, Dr. Daniel Gros, returned to the witness stand and was examined and testified further, through the interpreter, Mr. Joseph Laufer, as follows:

Cross Examination (Resumed)

By Mr. Burling:

Q. Dr. Gros, I am going to ask you to look once more at Section 4 of the report of the Reich President of August 1, 1931. Will you look, please, at the second sentence of that paragraph? I want you to look particularly at the verb in that sentence, and I want you to look at the verbal phrase; that is, there is a verb modified by a preposition. And the first word of the verbal phrase is the German word "uber", is it not? A. Yes.

Q. Then the next word in the verbal phrase is the
1580 word "darf"? Is that right? A. Yes.

Q. And the next word is "werden", is it not? A. Yes.

Q. We skipped the word "verfugt", did we not? A. Yes.

Q. And the verb is modified by the word "nur"? Is that right? A. Yes.

Q. And the infinitive of the actual verb used is "verfugen"? Is that right? A. Yes.

Q. And "uber" is a preposition that customarily goes with the verb "verfugen"? Is that right? A. Yes.

Q. And the term "verfugen uber" is a technical term of the German civil law, is it not? A. Yes.

Q. And the noun form of the word "verfugen" is "verfugung"? Is that correct? A. And when used in the Civil Code, it means a declaration of intention which results directly in the loss of a right or a change in a right by which the right is encumbered?—in other words, a legal transaction by which a right is directly transferred, encumbered, changed in its substance, or terminated?
1581 Is that correct? A. Yes, that is correct. The emphasis is on the word "immediate" or "direct".

Q. And it would include, would it not, one, transfer of ownership or of an existing pledge, or assignment of a claim? A. Yes.

Q. And another transaction which would be a verfugung would be a creation of a right in rem in a given property? A. That is also a verfugung.

Q. And another class of transactions which is classified as verfugung are waivers of rights? Is that correct? A. Yes.

Q. Are you familiar with a volume entitled "Treatise on Civil Law", by Enneccerus-Nipperdey? A. Yes.

Q. I will show you a section entitled "Waiver", which is a subsection to a section called "Particularly Important Verfugungen", and ask you if you will state how the authors of this treatise define "waiver".

Will you just read, please, the definition of "waiver" which I handed you? A. On page 429, under 3, it is stated as follows:

"A 'waiver' in the larger sense of the word is the surrender of a legal advantage by a declaration of in-
1583 tent directed toward that end."

That is the first sentence. It is stated there further:

"This legal advantage may be a right or may arise without such a right, from a rule of law which operates in favor of somebody, in particular a rule of the law of procedure.

"Since however, the waiver of rights is of importance almost exclusively for private law, and moreover can be substantially distinguished from the other kinds of waivers, it is recommended to define the surrender of a right by declaration of intent as a waiver in the narrow sense of the term"—and so on.

"The waiver of"—

Q. Just a moment, Doctor. You said "and so on", did you not? A. No. I have also read the next sentence.

Q. Well, you did use the words "and so on", did you not? A. That is correct. But after I had read the next following sentence.

Mr. Burling: Then I will ask the interpreter to read the next sentence.

The Interpreter: I read it already.

Mr. Burling: Will you translate it?

The Interpreter: "No waiver is presented by the
1583 mere non-acquisition of a right, if thereby a right of expectancy is not surrendered thereby"—and so on.

By Mr. Burling:

Q. Will you look again at Section 4 of the Executive Order of August 1, 1931, and state whether or not it is not clear to you that the waiver of a valid usufruct in foreign securities was a transaction within the meaning of that section? A. I believe to remember to have stated already yesterday that I am of the opinion that a waiver of a usufruct does not constitute a verfugung within the terms of this section, because by such a waiver, income which is pertinent to the terms of the Foreign Exchange Control is not affected directly or immediately, but indirectly.

And I have also stated this position in my applications to an agency, although I am willing to admit that another interpretation is possible, if one does not keep in mind the direct legal language, but the economic consequences and results.

Q. By the way, this textbook I showed you is a standard German commentary on the civil law, is it not? A. By all means, yes.

Q. And you agree with what it says about verfugung, do you not? A. Yes.

1584 Q. And you agree with what it said here about waivers, do you not? A. Yes.

Q. And you agreed yesterday, did you not, that a usufruct, in the technical sense, is a right in rem in property? A. Yes.

Q. And therefore a usufruct in foreign securities is a present right in rem in those foreign securities, isn't it? A. Yes.

Q. And a waiver of a usufruct would affect an immediate change in the legal status of the foreign securities, would it not? A. Yes, as far as the property right is concerned.

Q. Will you explain, then, why a waiver of a valid usufruct is not a present change in the legal status of the property so as to make it a verfugung? A. The waiver of a usufruct for the purposes of foreign exchange control does not directly affect the income from the securities which is alone pertinent to the terms of the provisions concerning Foreign Exchange Control.

Q. But it does immediately and directly affect a right in rem in the foreign securities, does it not? A. Yes.

1585 Q. And the concept of verfugung in the foreign exchange law is fully as broad if not broader than the concept in the general civil law? Is that not right? A. You cannot put it that way, because the Foreign Exchange Control legislation has a different end in mind than the rules of private law do.

Q. But those transactions which are characterized as verfugung, for purposes of civil law, are also characterized as verfugung, for purposes of the foreign exchange rules, aren't they? A. In the foreign exchange law, as in all specialized fields, it is customary to refer to the general concepts of civil law. But it must be decided from case to case whether or not a modification is in order where these concepts do not fit the particular case.

Q. Now, do you know Dr. Hartenstein's book on the law

of foreign exchange, do you not? A. Yes; I have quoted from it myself in my applications.

Q. And it is the principal commentary on foreign exchange law, is it not? A. It is a respected commentary.

Q. Will you look at pages 100 and 101 of Hartenstein's commentary and see if he does not define verfugung for purposes of foreign exchange regulations, in substantially the same way as you have yourself defined the term, in agreement with the earlier text I showed you.

1586 Specifically, isn't it true that Hartenstein defines transactions which are verfugung as sales, pledges, creation of a usufruct; in the case of claims, also performance by the debtor or by a third person; accords and satisfactions, as well as depositing the assets and simultaneously waiving the right to reclaim it; also assignment, set-off, waiver, extension of time? A. So far as I can see now, Hartenstein takes a thing which is quite natural, the concept of verfugung as developed in the civil law, for his starting point, and therefore considers transfer, assignment of claims, the creation of a usufruct, and so forth, as included in the term of verfugung, which is quite obvious.

But he does raise the question, on his own, whether or not the concept of verfugung for purposes of Foreign Exchange Control legislation must be defined in a different way. And after weighing various opinions, he finally inclines to the view that for the time being the concept of the private law of verfugung should be used until by governmental directives the question had been clarified.

Q. Are you in possession of the text of any governmental directives that subsequently did clarify the definition of verfugung? A. I only see from Hartenstein that he refers to general orders, Roman numerals II, IX, X, XXI, XL, XLI, which he says dealt with the matter.

1587 Q. You came all the way from Germany to testify in this lawsuit, didn't you? A. Yes.

Q. And you understood when you left Germany that the main point of your testimony was to deal with the question of waiver of Niessbrauch, didn't you? A. I only knew I was to be questioned concerning matters which came within my observation, but not concerning questions of general law.

Mr. Boland: I would like to make a statement to the Court at this particular time, that this witness was also going to testify in regard to the criminal proceedings, which have been more or less precluded by strong argumentation on the part of the Government. This man was not brought over here as a legal expert to testify on Niessbrauch. He did not come over here to testify on the legal aspects of this case. That was not the purpose of this trip.

By Mr. Burling:

Q. I will renew my question, which you did not answer when I asked it first:

Are you in possession of any texts indicating that the German Government subsequently changed the definition of the concept of verfugung? A. My present memory does not contain anything concerning such a definition.

1588 Q. And Hartenstein specifically includes, within the class of transactions which are called verfugung, waivers? A. I haven't read it here, but I take it for granted. Yes, it is here, a waiver of assertion.

Q. Now, as a matter of fact, didn't you yourself come to the conclusion, in 1935, that a waiver of a usufruct in foreign exchange required a license in order to be valid? A. I stated that different opinions concerning this are possible. But in my application to the Foreign Exchange Control Office of November, I have taken that position which was most favorable to my clients; I took the position that it did not constitute such a verfugung.

Q. I did not ask you, Dr. Gros, what position you took. I asked if you did not yourself come to the legal judgment in July, 1935, that a waiver required a license. A. I have examined the question in my own mind and I have come to the conclusion that different opinions and different interpretations were possible.

Q. But you came to the conclusion in July, 1935, did you not, that a waiver of a usufruct in foreign securities required a license? A. In the terms in which you put the question, I do not remember that.

1589 Q. Will you look at Plaintiff's 96-A, please. I address your attention to the section having the Roman numeral II. Will you look at the fifth paragraph, which begins in English with the words, "This legal situation".

I want to read the second sentence of that paragraph in English and ask you if that is what you said, in your memorandum which you testified yesterday you preferred to clarify your own thinking about the Niessbrauch—

"If a valid usufruct was created, the parents have immediate title to the income and are, therefore, obliged to report and to deliver the foreign exchange which has automatically accrued to them.

"In this connection it must be remembered that the duty to convert foreign exchange cannot be rendered nugatory by a subsequent waiver by the parents of the automatically accrued income. For even a waiver is a transfer within the meaning of the foreign exchange regulations requiring a specific license."

Mr. Boland: I would like the record to indicate, Your Honor, that that is merely an argument in a series of arguments in this particular exhibit.

Mr. Burling: I object to the characterization of counsel of an exhibit. The record should not show any such thing. That is an argument made now by Mr. Boland.

The Court: What is the exhibit number?

Mr. Burling: Number 96. This is a memorandum
1590 the witness testified yesterday he prepared.

The Court: All right.

Mr. Boland: The point I make, Your Honor, is by his excerpting that particular paragraph, it might lend credence to the argument that a valid usufruct has been created, and in the prior arguments in that very exhibit he has been arguing no valid usufruct has been created. That is a "but if" argument.

Mr. Burling: My entire examination of the witness, Your Honor, is on the hypothesis that a valid usufruct was created, and trying to establish it could not be waived without a license.

The Court: All right.

Mr. Burling: And I am trying to bring out the point that the witness himself said in 1935 that it could not be waived without a license.

The Witness: This is a gross misunderstanding.

By Mr. Burling:

Q. I take it, you don't mean a pun? A. I don't know what I should say about this. It is incomprehensible to me how such an answer can be given to me.

Q. At any rate, did you not state that if a valid usufruct had been created, then it could not be waived without a license? Isn't that exactly what you say in this
1591 memorandum? A. No; that is precisely what I am not saying. But I say that the accrued income cannot be waived without a license, and in such clear words that an erroneous interpretation is quite incomprehensible to me.

Q. I agree with you there. But you do say, do you not, "A waiver is a transfer within the meaning of the foreign exchange regulations"? A. Yes, by all means.

Q. And you do say that a waiver within the meaning of

the foreign exchange regulations requires a specific license? A. Yes.

Q. And you also know, do you not, that if parties went through a purported transaction which required a license, without obtaining a license, that purported transaction was void? A. Yes.

Q. Now, going back to the years 1935 through 1937, did you have any personal knowledge whatever as to whether a valid usufruct in the proceeds of 600 Opel shares had in fact been created in 1931, or 1932? A. No.

Q. And, more specifically, you did not have any personal knowledge as to whether Hans Frankenberg held the key to a box in which the Uebersee shares were placed, in the capacity of agent for Wilhelm von Opel, did you?

1592 A. No.

Q. Will you say again when you first heard about the gold case? A. During the Wiesbaden depositions.

Q. I see. You heard Mr. Laufer translate portions of Mr. Fritz von Opel's affidavit during the Wiesbaden depositions, did you not? A. Yes.

Q. And in fact you heard Mr. Laufer read those portions of the gold case affidavit of Fritz von Opel, at the Wiesbaden depositions, in which Fritz von Opel stated that the Uebersee shares were in a box in a bank in Zurich, and that Frankenberg was holding the key to the box as Wilhelm von Opel's agent? Isn't that correct? A. Yes.

Q. And you still say that your difficulty yesterday in understanding the hypothesis I put to you was genuine? A. They are genuine, for the reason that it is difficult to draw conclusions from the hypothesis whether or not a valid usufruct was created.

Q. You did not come to this country now at your own expense, did you? A. No.

Q. Who did pay your passage? A. I was advised that the passage had been paid. I take it that Fritz

1593 von Opel paid for it. I haven't made special inquiry about that.

Q. Are you receiving any additional compensation from anyone for coming to this country? A. No. All I get is reimbursement for my expenses.

Q. You agreed to come here and stay away from your law practice in Germany for many weeks, in return for nothing more than expenses? A. Yes, because I do not suffer any economic disadvantages from it.

Q. And you also have performed legal services in connection with this case in Germany, have you not? A. Yes, I have made repeated inquiries.

Q. Have you been paid or promised pay for those services? A. No.

Q. You just contributed them free? A. I have rendered so many services to the family von Opel, and I have received such large compensation from the family von Opel, that I cannot charge for such petty matters.

Q. As a matter of fact, you are the executor of the will of Wilhelm von Opel? Are you not? A. Yes.

Q. And it is the custom in Germany, is it not, that the executor is paid in accordance with a schedule of fees prepared by the bar associations? A. It is not pre-
1594 cisely that way, but by and large it is correct.

Q. And where the executor deals with an estate of more than a million marks, a fee of one per cent of the estate would be considered appropriate? Is that correct? A. Yes.

Q. And the estate of Wilhelm von Opel, using the marks as they were before their recent devaluation, contained more than ten million marks, did it not? A. Yes.

Q. So that you expect to receive compensation, as executor, of at least a hundred thousand marks, do you not? A. Unfortunately not, because the fee is determined on the basis of the value during the course of the activities of the executor, and the value is substantially less today.

Q. What do you think the value of Wilhelm von Opel's estate is today? A. The large majority of the estate consists of securities which are deposited in a collective ac-

count with a Berlin bank, and it has been seized by the Russians and their legal fate is undetermined as yet.

Q How did you come to be named the executor? A. The will named Fritz von Opel as executor of the estate. It was also provided, in order to take care of all eventualities, that Fritz von Opel could appoint somebody
1595 else in his own stead. This Fritz von Opel has done, and thereupon the surrogate's court in Wiesbaden has issued a certificate naming me as executor.

Q. But at any rate this law business in connection with the estate of Wilhelm von Opel was given to you by the action of Fritz von Opel? Is that correct? A. Yes.

Q. Going back to your retention by Wilhelm von Opel in connection with the usufruct, when were you first retained on this subject? A. The Niessbrauch was already involved in the criminal proceedings. But the actual mandate in that respect I received about the time I prepared this memorandum of law.

Q. When did Wilhelm von Opel first say to you that he considered the usufruct as nugatory? A. I cannot state that from memory.

Q. Was it just at the time this memorandum, which is Plaintiff's 96, was prepared, or earlier? A. I cannot state that on memory. I would have to draw conclusions which would be uncertain.

Q. What is your best recollection? A. I can't give another answer than the one I gave already.

Q. At any rate, at the time you prepared Plaintiff's 96, the thought had occurred to you, had it not, that
1596 the German authorities might require or seek to require Wilhelm von Opel to report his usufruct in foreign exchange, for Foreign Exchange Control purposes and for tax purposes? A. Yes. The fear that the German authorities would take steps with respect thereto was always alive, because of the mempry of the preceding criminal proceedings involved.

Q. And therefore you understood, did you not, it was extremely important to Wilhelm von Opel to make it appear to the German Government that there was no usufruct? A. That was very important for him in order to restore to him the sense of legal security which otherwise was absent.

Q. And that was the purpose of all the legal activity which you carried on, about which you testified yesterday, wasn't it? A. Yes.

Q. You testified yesterday concerning Plaintiff's 97-A, and stated there was a draft attached to it, did you not? A. Yes, sir.

Q. This draft was not signed, was it? A. No.

Q. And no other document of this nature, that is, a formal, written amendment of the gift agreement of October 5, 1931, was ever signed, was it? A. None that came to my personal attention; but I assume that there was none, because the parties relied in this respect entirely on 1597 what I advised them to do.

Q. You testified yesterday, at page 1537, as follows:

"Question: Doctor, you have testified, have you not, that the draft attached to Exhibit 97-A was a draft of an agreement in connection with waiving the Niessbrauch?"

And you answered—

"I did not say that this draft was a draft for a contemplated waiver of the usufruct, but was a draft of a statement to the effect that the parties considered the usufruct as being no longer in effect."

I ask you to look at the letter to which the draft was attached. It is there stated, is it not?—

"The parties to this agreement intend to take action on the basis of this conclusion, and to declare explicitly

in a supplement to be drawn up to the deed of gift that the usufruct stipulations contained therein will be considered as void."

Is that not a statement of what the parties intend to do in the future, rather than a statement of what they think did happen in the past? A. That is correct, upon a strictly literal interpretation.

Q. Thank you. Now, coming to the hypothesis that a valid usufruct did not arise, because of failure of
1598 delivery of possession to the usufructuary, there is still a very difficult legal problem, is there not, as to whether a waiver to a claim to create a usufruct, or a waiver to a claim to income, would be valid without a license? A. I did not consider that problem as such a serious one.

Q. I see. You heard Dr. Kronstein testify concerning the German law, did you not? A. I was only present for a short time, and I understood very little. Most of the time I was not present.

Q. Well, you understand, do you not, that plaintiffs have three hypotheses, three possible ways, in which they say the gift agreement of October 5, 1931, can be construed? A. I have heard about that from Dr. Kronstein. But if it is important, I would like to be told about these three possibilities again.

Q. You understand that the first hypothesis is that what was done on October 5 was that an agreement was entered into whereby Wilhelm von Opel had a claim to receive 80 per cent of the income from the gift? A. Yes, a claim in personam.

Q. On that hypothesis, in 1935, Wilhelm von Opel had an in personam claim against Fritz von Opel for 80 per cent of the income? Is that right? A. Yes, in the event of emergency, as I was always told.

1599 Q. That may have been the purpose of the gift, but it was a present in personam claim which Wil-

helm von Opel could exercise legally at any time he chose? Isn't that so? A. Yes, for the case of an emergency.

Mr. Boland: Your Honor, I think this is quite confusing. Dr. Kronstein was testifying as an expert, and in giving his interpretation of the gift agreement alone, he knew nothing of the facts of the case. They are asking questions of Dr. Gros for truth of the purpose intended by this reservation from the father and mother. And he cannot distinguish as to the right of distress, which was not present in Dr. Kronstein's testimony.

The Court: I am a little bit lost in what you are trying to develop here, Mr. Burling.

Mr. Burling: What I am trying to get at, Your Honor, is that even in the event that the Court should believe von Opel's testimony that there was no agency, and disbelieve his testimony earlier that there was an agency, and therefore that the usufruct, the right in rem, did not arise, but it was merely a right in personam, even that, I say, could not be waived as a matter of German law.

The Court: I don't think this witness is the one to be asked about that, on cross examination—I mean, about something Dr. Kronstein said on the stand here. If
1600 he had that in view, or in mind, when he drew these papers. That might be different. But I don't think we want to go into his observations in regard to what Dr. Kronstein said.

Mr. Burling: I was trying to exhaust the possibilities. My position is that there was no possible way in which this could be waived without a license.

The Court: But you have asked him that extensively, and now you are taking up some view of Dr. Kronstein's, from three different points of view, and asking his opinion about them, which I think is not proper cross examination.

Mr. Burling: Very well, Your Honor. But the witness did testify about waiver in general, and so far I have asked him only about waiver of a right in rem.

The Court: I think you can ask him about anything which operated on his mind when he drew any of these papers, or the agreement about which he has testified, but not otherwise.

Mr. Burling: Very well, Your Honor. I will drop the hypothesis.

The Court: I think we have been going rather far on that other proposition. He is not really your expert.

Mr. Burling: Well, Your Honor, the point is—

The Court: I think I will just sustain the objection. My ruling is going to be that anything he said or did, or any views he had at the time he drew this, you may ask him about.

I don't think we ought to take the time to try to
1601 pick out of him, by way of cross examination, some present view he has as to the law.

Mr. Burling: If Your Honor please, he did express the view that a waiver could be made.

The Court: I know. Anything he said at that time you may ask him about.

Mr. Burling: Yes, Your Honor.

By Mr. Burling:

Q. Did you express the view to any official of the German Government that due to any action taken by Wilhelm, Marta, and Fritz von Opel, rights which Wilhelm and Marta von Opel possessed ceased to exist? A. Yes.

Q. And was it not clear to you that no such rights could cease to exist in the absence of a license from the German Government? A. No.

Q. Did you advance arguments to the German Government and to Wilhelm von Opel to the effect that rights which Marta and Wilhelm previously held had come to an end validly, even though no license to terminate those rights was ever obtained? A. Yes; that is the very purpose of my applications addressed to the Foreign Exchange

Control Office in Wiesbaden of October 8, 1935, and my subsequent letter to the Federal Office of Foreign Exchange Control.

1602 Mr. Burling: I would ask Your Honor if you would clarify the ruling. I do not understand what I am allowed to do and what I am not allowed to do. I did think I would be allowed to try to point out to this witness that the position he took before the German Government is clearly contrary to the German law.

The Court: I think you have been permitted to cross examine at length. Ask him about this license, and the necessity for it. What I was sustaining the objection to was that you took up the series of claims that this other witness on the stand in this trial advanced, toward getting his opinion on those claims.

Mr. Burling: I will drop that, Your Honor.

The Court: Any matter that came to his mind at or about the time he rendered a statement or opinion, or took any action that has been testified to on direct, I think is pertinent.

Mr. Burling: Then I shall confine myself to that, Your Honor.

Mr. Boland: It would seem that this witness has testified that in his opinion no license was needed. And it seems to me incumbent upon the defendants to prove their point as a matter of law with their expert.

The Court: As I understand it, he asked him any number of questions about that. If he hasn't completed it,

1603 I will permit him to do that.

Mr. Burling: I have not asked more than one or two questions on whether you could waive an in personam right.

The Court: I thought I remembered you specifically asked him that. But you can ask it again.

By Mr. Burling:

Q. Will you not agree, Doctor, that a claim to receive income from foreign securities falls within the purview of the foreign exchange regulations? A. As far as I remember, I have never stated such a claim in my application, but have always spoke of a claim to the subsequent creation of a usufruct.

Q. Well, I now ask you, will you agree with me that a claim for income from foreign securities would be a claim within the purview of the foreign exchange regulations? A. Yes; I would agree to that at first blush.

Q. Now, do you have any authority whatever for the proposition which you gave to the German Government that a claim to have a usufruct created in the future, in foreign securities, could be waived without a license? A. I do not have authority for that, but I have the statement from Reichsbank Director Wilhelm that his lawyers agreed with my legal position.

Q. We will come to Wilhelm in a moment. But do you have any formal legal authority of any kind that you
1604 can cite? A. Neither a position pro nor a position contrary can be directly read from the statute.

Q. Do you have any commentary, article, or decision, or other formal legal matter, that supports your position? A. No. This singular case, as far as I know, had never been decided before and had therefore to be decided in accordance with general principles, and my position was subsequently approved.

Q. But whether or not is was approved, which you understand is in dispute, do you have any subsequent formal writing of any kind that supports your position? A. I can only refer to my memorandum of August 8, and December 27.

Q. You wouldn't expect any court to accept as a formal authority a self-serving letter written by you, would you? A. Of course, I base my argumentations on the law. But

in so far as the law does not provide in unequivocal language for this particular case so that you can simply read the decision from the text, general arguments have to be made which are based—

The Court (interposing): We are going to a terrible lot of length about nothing. He asked him if there was any formal decision. Ask him that. That is all we want to know.

1605 The Witness: No.

By Mr. Burling:

Q. Now, coming to your conversation with Wilhelm, assume that Wilhelm says what you say he did. A. Yes.

1606 Q. Wilhelm's lawyers would still be expressing an opinion on a state of facts furnished by you, wouldn't they? A. Of course.

Q. And you had no personal knowledge of what the facts were, did you? A. I had the gift agreement.

Q. But you didn't know what had been done—you had no personal knowledge of what had been done between the parties after the gift agreement, did you? A. Yes, to this extent, as the parties in my presence have waived their rights arising out of the usufruct provisions.

Q. Orally? A. Yes.

Q. Now, will you not agree if you were either mistaken when you told Wilhelm the facts or untruthful, then Wilhelm's opinion would be of no value whatever? A. If the facts relative in law, which were assumed, were in fact not existent, then you are right.

Q. As a matter of fact, it wasn't any of Wilhelm's business to pass on any of this matter at all? A. The opinion of Wilhelm was entirely sufficient for my purpose because I didn't want a license within the meaning of the foreign exchange control laws but solely for a confirmation of some

authority of my position for purpose of legal security.

1607 Q. But Wilhelm had no authority to construe foreign exchange laws with respect to what transactions required and what didn't require licenses, did he? A. In general, no, except that he may have gotten in touch with the Reichs Office for Foreign Exchange Control.

Q. But the agency of the German Government which would have final authority to issue licenses or determine what transactions needed to have licenses was the Reich Office for Foreign Exchange Control; isn't that right? A. Yes; it generally had the task of issuing such decisions.

Q. And you don't know whether Wilhelm did or didn't get an opinion from the office having jurisdiction over the subject matter? A. I cannot state that from my own knowledge, but I take it for granted.

Mr. Burling: That is all.

Redirect Examination

By Mr. Boland:

Q. Doctor, the purpose of these particular letters to the various agencies in Germany, you have testified, was for an approval of the waiver of whatever rights the father and mother had reserved to themselves; is that right?

A. Yes.

1608 Q. And that, as far as you know, there was no usufruct ever created with respect to this gift agreement; is that right? A. No.

Q. And therefore the purpose of these writings to the various German agencies was not to make it appear that a valid usufruct had not been created? A. No.

Q. You have stated, Doctor, that the parties never signed the draft attached to Exhibit 97-A. A. I stated that I had no knowledge about that, but I would have known about it because the parties always followed my advice.

Q. This draft wasn't prepared for purposes of signature by the parties, was it, Doctor? A. No.

Q. And therefore the fact that it wasn't signed is of no significance? A. Yes.

Q. Doctor, how is it that you happened to go to see Director Wilhelm in respect to this Niessbrauch? A. One day I received a telephone call in the year 1937, according to which Reichsbank Director Wilhelm wished to talk to me.

Q. And you testified that you, in fact, went to see
1609 Director Wilhelm as a result of this call, did you not? A. Yes.

Q. And when you went to see Director Wilhelm, did he talk about this Niessbrauch? A. Yes.

Q. And when he stated that his attorneys approved of your position, did he indicate whether they were attorneys within the Reichsbank or some other government agency? A. I cannot state that. I only remember that he had the file before him and said "our" lawyers. That was an ambiguous term. Whether he meant lawyers of that agency or lawyers who had been assembled for that purpose, I cannot state.

Mr. Boland: That is all.

(Thereupon the witness was excused and retired from the witness stand.)

Mr. Burling: I move to strike all the testimony concerning the conversation of this witness with Reichsbank Director Wilhelm as being irrelevant to any issue in the case.

Mr. Boland: I think we presented this issue yesterday, and it is the same issue.

Mr. Burling: I made the objection before the evidence came in and I now renew it.

Mr. Boland: I will restate my position.

1610 The Court: Tell me about it.

Mr. Boland: The entire point of Dr. Gros' testi-

mony, it is not if the statements of Director Wilhelm are the truth, but whether he stated it, and he stated it.

The Court: What did he state?

Mr. Boland: He stated in effect that the position taken by Dr. Gros whether the waiver of the rights of the parties was within the Foreign Exchange Control, he stated in effect that their attorneys agreed with the position of Dr. Gros that no waiver was necessary.

Now, the releyance of this testimony is that the parties relied on the advice of Dr. Wilhelm in knowing they were not going to incur criminal penalties under Foreign Exchange Control.

The Court: And therefore, what?

Mr. Boland: And therefore that the parties were free and waived any direct rights.

Mr. Burling: That does not follow at all. The parties were or were not free in accordance with what the German law was. If the German law, as we contend, required a license in order to waive rights, the hearsay opinion of a bank official, whom this official says agrees with him, was not the proper German authority, and it is wholly irrelevant.

The Court: Let me see if I get the purpose. Some question arose around this period—1935, was it?

1611 Mr. Boland: Yes.

The Court: As to whether this Niessbrauch existed or not; is that correct?

Mr. Boland: We do not contend in any sense of the word—

The Court (interposing): What was the question that arose in 1935?

Mr. Boland: The question first arose in respect to the criminal proceedings, which is handled by stipulation—merely that the old man was fined, and as a result of that, the old man wanted to get rid of all his rights and wanted no more trouble with the German Government, and that is when Dr. Gros was hired for getting rid of all rights, as

the father and mother were sick of it, and they had enough money to go on with, and they told him at that time, as Mr. von Opel and Dr. Gros testified, that the family wanted the right in case of distress, in case of financial need.

The Court: And your point is: If it was determined by his counsel and by the authorities that he had any rights which he needed to get rid of to comply with the law, he would have done it at that time?

Mr. Boland: That is right.

The Court: And that the lawyer and this man in the Government, whether right or wrong, having advised him that he had no rights or no necessity to get rid of them, that he did not take that action. I think I will per-
1612 mit that to stand.

Mr. Burling: Even assuming that were proved, it would still be irrelevant because they, in fact, didn't get a license.

The Court: You can argue that at the conclusion of the case.

Sometimes these department heads give you a wrong opinion, and if you rely on it, it would be a reason why you did not take some action you might have otherwise taken.

Mr. Gallagher: Can we have a five-minute recess? We are about to read about twenty minutes of Reichsbank Director Wilhelm's testimony.

The Court: I will take a five-minute recess.

(Thereupon a short recess was had. The following then occurred):

1613 Mr. Boland: At this time, Your Honor, we are going to offer pertinent parts of Director Wilhelm's deposition. The deposition was taken on Tuesday, April 6, 1948, as a witness of the defendant, in Washington, D. C.

I will just ask the reporter to copy in the first page of it, page 485, which makes reference to the notice filed and the persons who were present.

(Page 485 of the deposition reads as follows:)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 26453

UEBERSEE FINANZ-KORPORATION, A. G.

Plaintiff,

v.

TOM C. CLARK, Attorney General, as Successor to the Alien Property Custodian.

Defendant.

Washington, D. C.
Tuesday, April 6, 1948

"Deposition of Carl Friedrich Wilhelm, a witness of lawful age, called on behalf of the Defendant, pursuant to notice, filed with the Court of the Court at Room 670, in the Home Owners Loan Corporation Building, First Street and Indiana Avenue, Northwest, beginning at 1:30 p.m. before Braxton O. Watson, a Notary Public in and for the District of Columbia when were present on behalf
1614 of the respective parties:

"Gallagher, Osherman, Connor & Butler,
By: Richard J. Connor, Esq., and Christopher Boland, Esq., 831 - 15th Street, N. W. Washington, D. C. Appearing on behalf of the Plaintiff.

"Myron C. Baum, Esq., and Joseph Laufer, Esq., Attorneys of the Department of Justice, Appearing on behalf of the Defendant."

Mr. Boland: This is part of the direct examination. It reads:

"CARL FRIEDRICH WILHELM

was called as a witness on behalf of the Defendant, and, having been first duly sworn by the Notary, was examined and testified as follows:

"*Direct Examination*

"By Mr. Baum":

(Thereupon Mr. Boland read the question of the witness and Mr. Gallagher read the answers of the witness.)

"Question: Mr. Wilhelm, what is your full name?

"Answer: Carl Friedrich Wilhelm; Friedrich is the name by which I am called.

"Question: And where do you reside?

"Answer: Berlin, Dahlem Koenigin-Louisestr 87.

"Question: And what is your age?

"Answer: I am 59 years and two months old."

Mr. Boland: We are now turning to the middle of page 487, still continuing with Dr. Wilhelm's testimony.

1615 "Answer: * * * In May, 1930,"—

Mr. Burling (interposing): I think that question is relevant and I request you read it:

"Question: Will you briefly describe for us the nature of your education.

"Answer: After attending elementary school, and the usual preparatory schools, I passed in 1908 the examination qualifying me for admission to German Universities;

and subsequently studied law and political science for about four to five semesters.

"Then I became a banking apprentice of the bank which was then called the Bank for Trade and Industry, which later became the so-called Darmstaedter Bank.

"After completing my apprenticeship, I remained at the bank as a bank employee; and in August, 1914, I was called for military service as a member of the reserves."

Mr. Burling: You have read all of that section we want.

Mr. Gallagher: All right.

"Answer: * * * In May, 1930, I was assigned to Kempen im Allgaeu, as director of the local branch there; and upon the outbreak of the monetary crisis in August, 1931, I was called to Berlin as an official in charge of a certain field; and from 1934 to 1939, I was employed in the Directorate of the Reichsbank, first as an official in charge
1616 of a certain field; subsequently, that is, from 1935 on, as Vortragender Direktor, a title which implied a nominal promotion only.

"In February, 1939, I joined the Reichsbank directorate as a full member. In this position, I remained until the final collapse.

"Question: And from 1931 until 1939, what were your duties in the Reichsbank?

"Answer: I was in charge of foreign funds control.

"Question: And were you the sole person in charge, or did you have a superior?

"Answer: I had superiors.

"Question: And who were they?

"Answer: From 1931 to 1933, the official immediately superior to me was a Mr. Richard Fuchs, a Reichsbank director and member of the Reichsbank directorate. After 1933, it was Mr. Puhl, the later vice president of the Reichsbank. His first name is Emil. Beginning in 1939, I had no superior.

"Question: What were your duties after 1939?

"Answer: My duties were the same as before except for the fact that they were broadened, since I became the chief of all problems relating to foreign funds. That field included not only foreign funds control but also the trade in foreign funds.

"Question: And can you describe for us generally
1617 the functions of the Reichsbank in connection with foreign funds control in Germany?

"Answer: Briefly summarized, the function of the Reichsbank in the field of foreign funds control was as follows: One, to take control of all foreign funds available. The term 'foreign funds' also includes gold.

"Further, to see to it that all foreign funds accruing from abroad were actually transferred to Germany. That is, the foreign exchange which accrued from export and from capital transactions.

"Furthermore, the Reichsbank was the sole agency authorized to make foreign funds available. In doing that, the Reichsbank did not act alone; but it delegated its authority to the so-called commission banks, the so-called foreign funds banks; called 'Divisenbanken'."

Mr. Boland: At this point we are skipping through—

Br. Burling (interposing): Read further.

Mr. Boland: How far?

"Question: Was it the function of the Reichsbank to render legal opinions to the members of the public on foreign funds control matters?

"Answer: No, the Reichsbank did not render legal opinions.

"Question: What agency of the German Government had such a function, if any?

1618 "Answer: Such agency did exist. It was the Foreign Funds Control Offices, which were subordinated to the Reichs Economics Ministry.

"Question: Well, in addition to these Foreign Funds Control Offices, did the Economic Ministry itself render any such opinions?

"Answer: Yes, in all those instances in which the Foreign Funds Control Offices did not consider themselves qualified."

Mr. Boland: We are skipping to page 591, and it is the second and last paragraph of the answer, and the question by Mr. Baum is in connection with the third occasion in which Director Wilhelm had an occasion to come in contact with the von Opel problem.

"Answer: * * * In 1937, and that is in the first six months, the Reichsbank branch in Wiesbaden sent me a written inquiry: What shall we do about the foreign funds connected with the niessbrauch of Mr. von Opel?

"I advised the Reichsbank branch in Wiesbaden to approach Mr. Wilhelm von Opel, and to inquire where the foreign exchange connected with the niessbrauch had remained. Thereupon, a Dr. Daniel Gros appeared in my office and advised me that the niessbrauch was subject to a condition precedent; that is, it should only become operative if Wilhelm von Opel would become financially
1619 distressed. Moreover, it was the agreement of both parties that the niessbrauch would be waived; and thirdly, the niessbrauch had not come legally into effect at all, since certain defects as to its form had occurred, which I do not recall now.

"And he requested me to waive the demand for surrender of foreign exchange. I advised him that I could not do that; I would have to submit the matter first to the legal counsel of the Reichsbank. Moreover, his request involved modification of the agreement, over which the Reichsbank had no jurisdiction.

"The Reichsbank attorneys reviewed the statements made by Mr. Daniel Gros and came to the conclusion that on the

basis of the prevailing facts, we did not wish to undertake anything against Wilhelm von Opel."

Mr. Burling: Will you continue, please?

"Answer (continued): The reason for this conclusion was the following: In view of the often insufficient draftsmanship of the foreign funds control provisions, it might happen that a judge unfamiliar with the subject matter of foreign funds control would reach a conclusion adverse to the position of the Reichsbank. Such an adverse decision, however, would imply a loss of prestige to the Reichsbank. Such a loss of prestige, however, would have been intolerable to the Reichsbank, as the guardian of the German currency and the foreign funds."

1620 Mr. Burling: Will you continue, please?

Mr. Gallagher: We object to continuing any further because the remainder is hearsay.

Mr. Boland: Where he finished, at this particular point, the next sentence, if that is permitted in the record, we will ask Your Honor to bring the whole criminal proceeding in because if that sentence is permitted to go in the defendants will have tendered the best parts of the criminal proceeding without having had the disadvantages which we see in the criminal proceedings to their side, and we object to giving the statement to Your Honor.

Mr. Gallagher: We can give it to you off the record so you can rule.

(Thereupon a discussion was had off the record.)

The Court: I do not think this would be important or relevant. I also think and I am afraid if we get into it we might have to open the whole field up, which I do not want to do. We will leave that out.

Mr. Boland: We will skip to page 509, still questioning by Mr. Baum,—

Mr. Burling (interposing): Read the first paragraph, starting with the first paragraph on page 503.

Mr. Boland: And read all the way through to 509?

Mr. Burling: Those two paragraphs are important.

The Court: I will tell you what you do: Either
1621 of you gentlemen read what you want as you go along.

Mr. Gallagher: At this point, Your Honor—and this is off the record again.

(Thereupon a discussion was had off the record.)

The Court: Read it. If you have objection, I will consider it later.

If you are going to have a lot of this, I would like to have you mark it between you.

Mr. Boland: Is this the first paragraph on 503?

Mr. Burling: Yes, and the second paragraph, which begins, "I also know."

Mr. Boland: We object to the introduction of this without having full opportunity to explore the depositions of Fritz von Opel, and we will not permit innuendoes to be drawn without a complete exploration of the deposition.

Mr. Burling: I don't know how Your Honor can rule on it, without reading it.

The Court: I do not know, either.

Mr. Boland: I will show it to you. It is the first and second paragraphs on this page (handing a document to the Court).

The Court: That has already been testified about, that first. Somebody testified about that. I think Mr. von Opel testified about it himself, didn't he? He was asked about that.

1622 Mr. Gallagher: He testified he brought some marks back and transferred them.

The Court: I don't know that he brought them. He testified he was asked.

Mr. Boland: I don't want to leave the impression with the Court that his offer to take dollars or foreign exchange back to the country was necessarily against the interests of the Reichsbank in respect to the waiver.

Mr. Burling: We contend it was and it is therefore relevant.

The Court: This first paragraph he has already testified about. It was by Mr. von Opel and without objection. I am sure of that because I remember the testimony.

Let us see the second one. On that ground I will permit it because I think it is already in the record without objection.

Well, now, Mr. Burling, what is the significance of the second paragraph?

Mr. Burling: I will withdraw my request for that paragraph.

The Court: All right. Just read that first one.

"Answer: * * * It was decided that I undertake negotiations with Fritz von Opel with a view to insure by such negotiations that foreign funds would be surrendered by him on a voluntary basis, for the Reichsbank needed
1623 foreign funds and had to have them. The Reichsbank was not interested in criminal penalties."

Mr. Boland: Now, on page 509, a question by Mr. Baum:

"Question: Now, coming to the third occasion which you referred to, you testified that Dr. Daniel Gros came to see you. Did you ask him to come to see you?

"Answer: No, not for his first visit; decidedly not. As to the second visit, I had to reply to him with respect to what may be called his questions.

"Question: And on the occasion of these conferences with Daniel Gros, did he send you or deliver to you any letters?

"Answer: After the second conference, he, personally, appeared for a third meeting, and upon the occasion of this

third meeting, he handed a letter to me, in which he set forth, so to speak, what he claimed to be the result of the second conference.

"Question: I show you now Plaintiff's Exhibit 51"—that is Exhibit 101 now—"and ask you whether that is a copy of the letter to which you refer?

"Answer: That is the letter; I have seen it; that is the one he gave to me. That is, he wanted to hand it to me. I told him, 'What should I do with the letter? Take it back again.' I do not recall now whether, in the end, I took it myself, or whether he left it outside the door with the receptionist.

1624

"Question: I call your attention to the statements made in the second paragraph of that letter and ask you whether that paragraph correctly states what you told Dr. Gros?"

Mr. Boland: I believe we better read that:

"I informed Mr. Fritz von Opel that you told me that your legal aids in charge of the usufruct case also denied that Geheimrat Dr. Wilhelm von Opel had a monetary claim against Mr. Fritz von Opel and that, consequently, no legal obligation exists within the terms of the provisions of the foreign exchange law."

"Answer: This paragraph is not correct. I am certain that I did not tell him that I considered a claim of Dr. Wilhelm von Opel as non-existent. What I told him was that we did not wish to enforce such a claim.

"Question: Were you in any way embarrassed when Dr. Gros handed you this letter?

"Answer: In my capacity of chief of the Foreign Funds Control Office, which I pursued for many years, I do not recall having ever been embarrassed by a letter of this kind. If Dr. Gros so testified, I am sure it must have been his subjective impression.

"Question: Did you tell Dr. Gros whether or not you could reply to this letter?

1625 "Answer: I do not remember that I told him expressly, 'You will not get an answer', but it is certainly not true that I promised an answer.

"Question: Did you ever reply to this letter?

"Answer: This letter was never answered.

"Question: Why not?

"Answer: I must make an explanation which, as such, has nothing to do with this case. We have had the experience that written statements made by the Reichsbank were repeatedly abused by the addressees. We did not know what Fritz von Opel or Daniel Gros intended to do, or what purpose they had in mind, with such a letter of reply. And, furthermore, it was entirely immaterial to us what opinon Mr. Daniel Gros had concerning the legal question.

"Question: What do you mean by the legal situation?

"Answer: What I mean is, Mr. Daniel Gros stated that I had denied the existence of a legal claim by Wilhelm von Opel against Mr. Fritz von Opel; and it was immaterial, as far as we were concerned, whether he was of that opinion or not. He had no written statement from us which he could present somewhere else. I refused to make a statement in writing, as I had said before.

"I would like to add that I would not have given an answer to Mr. Daniel Gros, even if he had been right, because it would have been a declaration against our own interests."

1626 Mr. Boland: Now, page 514.

Mr. Burling: On page 512, Your Honor, the last question and answer on the page, I request be read.

"Question: When Dr. Gros delivered this letter, Plaintiff's Exhibit 101, to you, did you tell him that the statements contained in that letter were not true, in your opinion?

"Answer: According to my recollection, yes; I do not recall the precise words which were used, but, according to my recollection, I told him something like this:

"'Mr. Gros, the matter was not that way.'

"I did not say more, for the simple reason, already to avoid an unfolding of the underlying problems; and that is why I confined myself to that answer."

Mr. Boland: Now, on page 514, and this is cross examination by Mr. Connor—skipping to page 539 in the middle of the page. This is still cross examinaton. On page 539, question by Mr. Connor:

"Question: When was the first conference which you had with Dr. Gros in reference to the niessbrauch matter?

"Answer: In my recollection, it was in the neighborhood of the end of the first half of the year 1937.

"Question: And was Fritz von Opel with Dr. Gros on that occasion?

"Answer: No.

1627 "Question: When was the next conference, if any, with Dr. Gros in reference to the niessbrauch?

"Answer: Perhaps eight or ten days later.

"Question: And then did you have a third discussion with Dr. Gros about the niessbrauch?

"Answer: Not in the niessbrauch matter. Whether he came to see me later, another time in another matter, I do not know."

Mr. Boland: This is page 559, and still cross examination by Mr. Connor.

"Question: Well, isn't it a fact that the reason you didn't pursue any court procedure was the fact that you were convinced that you had no case at all?

"Answer: No. The only reason why we didn't go to court was that we did not want to assume the risk of losing the case. No matter whether the losing of the case resulted from the legal situation or from interference of higher places."

Mr. Boland: The Court indicated you will read those later, Mr. Burling.

Mr. Burling: If Your Honor please, the difficulty about that is we are going to get the record chopped up. If you have it read, you can read it.

Mr. Boland: That is all we want to read, Your Honor.

The Court: Read what you want now.

1628 Mr. Burling: I want just the next sentence, and I shall read from page 559 where you stopped reading.

Mr. Gallagher: Wait a second, just a minute, please.

Mr. Burling: I will withdraw that.

Mr. Gallagher: All right, then.

Can we recess now, Your Honor? We want to start with another witness.

The Court: You can do that this afternoon.

Who do you have this afternoon?

Mr. Gallagher: Dr. Kaufmann and Dr. Kronstein.

The Court: Dr. Kronstein?

Mr. Gallagher: He is coming back on nationality but not on this.

The Court: Who is the other one?

Mr. Gallagher: Dr. Kaufmann.

The Court: Is he a lengthy witness?

Mr. Gallagher: I don't believe so, Your Honor; not on direct examination.

The Court: Do you think you may be able to conclude with these two today?

Mr. Gallagher: I think so.

The Court: Do you have any more testimony after that?

Mr. Gallagher: Not at this point, but we would appreciate it if the Court would indulge us, that we not close today, because it is our intention to bring Mr. Gaeng

1629 here from Switzerland in connection with the identification of the book situation yesterday.

Mr. Burling: May I say something?

I have two witnesses from out of town who will have to go home. One is a short witness, Calvin Houghland. If we could put him on, he would not have to come back.

The Court: Whatever you agree on, will be all right. I have a luncheon engagement but I think I can make it by 2 o'clock. It is one I had made some time ago. I will be back at 2 o'clock, and if I am late, it won't be more than five or ten minutes.

(Thereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m., for the luncheon recess.)

1630 AFTER RECESS

Mr. Boland: At this time, Your Honor, we would like to call Dr. Kaufmann to the stand.

Mr. Burling: I am still discussing what I was. If Your Honor please, I think we do not wish to read any more of the deposition of Reichsbank Director Wilhelm. Before I make that statement flatly, may I ask Your Honor once more about a question of a ruling. The point is, there is evidence which we would wish to put in—that is, additional testimony by Wilhelm—if the ruling is one way and not if it is another way, and it is quite an important point.

I think I understand Your Honor, but I ask leave to ask you once more. Do I correctly understand that Your Honor is admitting the testimony of the witnesses Gros and Wilhelm concerning what Wilhelm said to Gros merely as evidence that he said it and not as evidence concerning the correctness of what he said or his motive for saying it?

The Court: That is correct.

Mr. Burling: Thank you, Your Honor. Then we do not wish to read any more of the Wilhelm deposition.

The Court: That is the only purpose for which you offered it, is it not?

Mr. Boland: Yes, sir. At this time, Your Honor, we would like to call Dr. Kaufmann to the stand. Whereupon—

1631 OTTO KAUFMANN, was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Boland:

Q. Would you state your full name for the record, Doctor? A. Otto Kaufmann, with one "F" and two "N".

Q. And your place of birth? A. Zurich, in Switzerland.

Q. And your date of birth? A. February 28, 1914.

Q. And what is your nationality, Doctor? A. Swiss.

Q. And you are a Swiss citizen? A. I am a Swiss citizen, yes.

Q. Would you state your educational qualifications, briefly? A. I entered grammar school in Zurich in 1920, went through grammar school and through the gymnasium of Zurich, and came out of there in the fall of 1932.

Q. What do you mean by gymnasium, Doctor? A. Gymnasium is a combination of high school and junior college.

Q. And after 1932? A. After 1932 I first worked
1632 in a bank for near to a year, at Geneva.

Q. And what position did you hold in the bank? A. Oh, I was there just to get a little acquainted with banking practice, as a volunteer.

Q. How long were you in the bank? A. Near to a year.

Q. Does that bring us to 1933? A. Exactly.

Q. Then what did you do? A. Then I entered the law school of the University of Zurich, and I studied law there up to February 1939, where I got my degree of doctor of law.

Q. And then what did you do? A. After that I was mostly in the army during the rest of '39 and '40, and then I became a secretary in the trial court of Uster, U-S-T-E-R, in the countryside of the State of Zurich, Switzerland.

Q. What is the position of secretary to the court? A.

There are different degrees of secretary. First you are just an assistant of the main secretary. Now, later on, when the main secretary was in the army, I replaced him; and then the secretary is the legal advisor of the court, because the trial courts are mostly made of laymen; just the president in that court was a lawyer.

1633 Q. And the secretary did what? A. He is the advisor of the court, and he also writes all the opnions, because in our country the judges do not write the opinion themselves, but the secretary writes the opinion for the whole court.

Q. And how long did you remain in this position? A. Something around nine months, altogether, with interruptions by military service.

Q. And this brings us to approximately what year? A. Oh, to beginning of 1942.

Q. Then what did you do? A. Then I entered the law office of my father, I passed the bar examination at Zurich, and then I entered a law firm at Uster, and I worked as an attorney of law in that law firm.

Q. For how long, Doctor? A. Till to the end of '43, I think.

Q. Then what did you do? A. And then I was asked by the Swiss School of Economics, the University of St. Gallen, to become a legal assistant in that university, and to start my academic career. That time I wrote my main publication on the new agricultural real estate law of Switzerland in order to become a so-called privatdozent; and when I was admitted I became a full-employed privatdozent. That is practically similar to an assistant professor in this country.

1634 Q. Did you have any other legal writings? A. My first publication that has been printed was my thesis on the liability in the corporation limited by guarantee, and now my last important publication is the commentary on the articles on legal accounting in the main commentary of corporation law of our country.

Q. What is the significance of the commentary in Switzerland? A. Switzerland is a code country. We unify the private law in a statute enacted in 1912, and the commentary gives the legal opinions with reference to the cases following the disposition of the code, article by article. That is a commentary.

Q. How long did you remain as a professor at the university? A. I am still a full-employed privatdozent, and of the Swiss School of Economics, but in the fall of '47 I came over to the Yale Law School to study there for advanced legal studies, and I got my Master's degree last summer at the Yale Law School.

Q. What is your present occupation? A. Then I returned to Europe and I came back, and I give now a course of comparative law at the Yale Law School. Besides this I am doing some legal research work.

Q. And you are presently teaching, are you? A. Yes,
I give this course, as I told you, comparative
1635 law.

Q. Doctor, I show you now Plaintiff's Exhibit 5 and 5-A and ask you whether you are familiar with this agreement. A. Yes, I read it.

Q. Directing your attention to the first paragraph on page 2 of the English translation of Exhibit 5, would you read this paragraph, please.

Mr. Burling: Just a minute, please. I object to any such testimony by Professor Kaufmann, because it is wholly irrelevant and immaterial. The document which the evidence establishes beyond peradventure, was drawn up between two German citizens, within Germany, relating to shares of German stock which were physically located in New York under an escrow agreement. I submit that no question which this witness—there is no question relating to this instrument which this professor is competent to express an opinion on.

Mr. Boland: May I make a statement, Your Honor. The

plaintiff corporation is a Swiss corporation. The shares of stock of Uebersee, the plaintiff corporation, are shares of stock which it has been stipulated is the present corpus of the gift agreement. This res, or these shares of stock are presently located in Switzerland and were located at the time of vesting in Switzerland.

If a usufruct were established in connection with this particular gift, it would have been established under
1636 Swiss law. If a usufruct were demanded, or if the parents demanded the son to set up a usufruct, it would have been set up under Swiss law.

The second but more important phase of this particular testimony is in connection with the waiver, and a waiver although true enough made among donors who were German citizens we think entirely material at this time to show the Court the effect of such waiver under Swiss law in connection with the corpus of this gift, whether a usufruct was or was not established. We think it is very, very material.

Mr. Burling: I am not sure that I would not tentatively agree with Mr. Boland on the second point. I cannot understand, however, how this witness can testify about a transaction which took place, allegedly, on October 5, 1931, when there was no Swiss interest relating to this. Swiss law certainly, no matter what else it does, does not go back for the purposes of this Court and cast light on what happened in Germany in 1931 to German nationals, relating to shares of a German corporation.

Mr. Boland: I think that Mr. Burling has misconceived the purpose of the question, Your Honor. The purpose of this question is merely to ask him whether or not he is familiar with the fact that there is a usufruct. We do not want him to interpret this agreement. It is merely as a ground work to get into the general topic of his con-
1637 versation. I will be glad to withdraw the question.

Mr. Burling: I then withdraw my objection. I do not concede that any question of Swiss law is before this Court.

Mr. Boland: I think we can establish that with this witness, Your Honor.

That is a matter of law for this Court to decide; there is a very serious question of Swiss law. The corpus of this gift is located in Switzerland. It is our contention, Your Honor, that under Swiss law a waiver that was valid under the private law of Germany, regardless of the foreign currency regulations, will be recognized and given full faith and credit in Switzerland, that the Supreme Court and the established law of Switzerland will not recognize any foreign currency regulations in Germany, and that is the main purpose of this man's testimony. The corpus of the gift is in Switzerland, and the Swiss law will look only to the private law of Germany by conflicts of law, and if valid under the private law, then they will give full effect to the waiver.

And the position of the United States Government in this particular case is that of taking over the rights of Wilhelm and Martha von Opel, and if Martha and Wilhelm von Opel tried to establish a usufruct after having waived it under Swiss law, they would not be permitted to establish it. It would not recognize any subsequent rights.

Mr. Burling: That is a position which I concede
1638 Mr. Boland has a right to argue at the appropriate time. It is, nevertheless, an argument addressed to Your Honor's knowledge of the law and not this witnes'. Because the question of what foreign law Your Honor will apply is a matter of our domestic law of contracts.

The Court: That is undoubtedly true. But if I did ultimately decide that the law of the jurisdiction where the property is located did control, then I would have to know the Swiss law.

Mr. Burling: I agree with Your Honor.

The Court: I think I will take it, then, and bear in mind your point.

Mr. Burling: By withdrawing my objection, which I do,

I do not wish to concede the point that Swiss law governs.

The Court: Yes, I understand. All right, he wants to save his point to argue that the Swiss law does not apply.

Mr. Boland: We are agreeable to that.

By Mr. Boland:

Q. Are you familiar with the term "niessbrauch"? A. I am familiar with it.

Q. Is there such a term under Swiss law? A. The Swiss code use the term "nutzniessung." That is exactly the same concept as "niessbrauch."

Q. And is there a provision in respect of niessbräuch or nutzniessung under the Swiss code? A. Yes, there
1639 is a section about the niessbrauch in the articles 745 'til 775. They deal with the nutzniessung.

Q. And does that cover the general definition of nutzniessung—niessbrauch? A. There is no explicit definition of nutzniessung in it, but this whole chapter that is in the book on property deals with the nutzniessung, or with the niessbrauch.

Q. Would you explain generally the provisions of those particular sections to which you have referred? A. The nutzniessung, or niessbrauch, is a so-called limited right in rem. That means that the full ownership is split into two rights. The one is the right as to so-called—that the so-called usufructuary has. He has the right to get the interest, fruits, he can administer the thing; if shares are the object of the usufruct, he has also the voting right. And the other right is the so-called nude proprietes, N-U-D-E P-R-O-P-R-I-E-T-E-S.

The nude proprietes belongs to the legal owner. He has the right to control that the usufructuary uses the capital gradually, and he will get back the full ownership if the usufruct comes to an end, because a usufruct can only be made to last for lifetime.

Q. Under the provisions of the Swiss Code, is joint pos-

session necessary in order to establish a valid niessbrauch?

A. In order to establish a valid niessbrauch as a
1640 right in rem, it is necessary to transfer possession to the usufructuary. That is said explicitly in the article 746 of the Swiss civil code.

Q. Doctor, are you familiar with the provisions of the German code in respect of niessbrauch? A. Yes, I know them.

Q. And you have had an opportunity to read them? A. I read them.

Q. And are the provisions under the Swiss code comparable to the provisions under the German code? A. They are comparable but there are some minor differences.

Q. But in general? A. In general they are similar.

Q. So that a Swiss court would have no difficulty in establishing a niessbrauch; for example, let us assume this case, that the donor gives property and passes title to a donee, and the contractual relationship is such that the donor has a right to call upon the donee to establish a usufruct in the future. Assuming that that arrangement, that agreement had been entered into in Germany, and that the corpus of the gift was actually now located in Switzerland, if the donor came and sued to establish his right in Switzerland, there would be no difficulty in establishing the niessbrauch, is that right? A. No difficulty at all.

1641 The Court: What would be the view of the Swiss Court? You say there is no difficulty. Is that because you would follow the law of Germany?

The Witness: No, they would establish a usufruct under Swiss law, naturally, but the claim would be, "Please, Court, order the defendant establish the niessbrauch," and then the court would order the defendant to establish the niessbrauch.

The Court: In other words, you would govern it by the law of your state, but you would take into account the acts that occurred in Germany, together with the demand or act that took place in Switzerland, is that right?

The Witness: Exactly. We would say the contract is governed by German law, but the way, how it has to be performed, is governed by Swiss law.

The Court: All right.

By Mr. Boland:

Q. Doctor, what is necessary under Swiss law to create a usufruct as a right in rem? A. You have to transfer the possession of the thing in which the usufruct shall be created to the usufructuary.

Q. Suppose that the corpus of the gift is in the nature of bearer shares of stock, and that these bearer shares of stock were located in a safe deposit box. What would be required under Swiss law in order to give the usufructuary possession? A. You have to give the
1642 key of the safe deposit box to the usufructuary or to his agent.

Q. Well, suppose for example that there is only one key, and the usufructuary keeps that key? A. The usufructuary keeps the key, that's okay.

Q. He is given the key, right? A. He is given the key; then the usufruct is established, because the usufructuary can take out the shares and exercise all rights of a possessor.

Q. Suppose there are two keys, and the donee keeps one, and the usufructuary gets the other? A. That is still sufficient, because still the usufructuary can exercise his rights.

Q. Suppose there is only one key, and the donee keeps that key? A. That would not be sufficient.

Q. So the main thing is delivery of possession or a substitute for possession? A. That is the delivery of possession.

Q. The delivery of the key is delivery of possession in Swiss law? A. Exactly, yes.

Q. Can delivery be made, Doctor, under Swiss law to an

agent of the usufructuary? A. That can be made.

1643 Q. Can delivery be made to the usufructuary, to a person who is not in fact the agent of the usufructuary? A. He is not the agent?

Q. That's right, not in fact. A. If he is not the agent, and if the usufructuary doesn't ratify later on that he is an agent, there is no transfer of possession.

Q. Assume, Doctor, that it is established in this case that in the year of 1935 the two donors to a gift agreement in Germany, and the donee of the gift agreement under which title is passed to the donee, and in which certain rights in connection with the usufruct are reserved to the donors—we will assume that a usufruct has not in fact been established but that there is a right in the donors to call upon the donee to establish a usufruct.

Now, let us assume further that the corpus of this gift if physically located in Switzerland, and that the parties now agree that all rights retained by the donors would be waived or terminated or made nugatory. Would the Swiss law recognize such a waiver? A. Where was this agreement between these persons made?

Q. The agreement was made in Germany? A. Yes, it would be recognized.

Q. How would a Swiss court handle the situation? A.

1644 They would say that such an agreement was made in Germany and that the rules of German civil law apply, so they would look at this agreement made in Germany, and if there is a valid agreement under German civil law, they would enforce this agreement in Switzerland in saying that the usufruct has been waived.

Q. Let us assume, Doctor, the same case, that under German private law all that is necessary to effect a waiver, to to terminate the rights of the donor, is an oral agreement among the parties that the rights are now out of existence. However, let us assume further that under the foreign currency regulations of Germany that such a waiver is void. Under these assumptions, Doctor, what

effect would a German court give to such a waiver? A. German court?

Q. Swiss court, pardon me. A. The Swiss court would disregard completely the German foreign currency regulations and provisions in these regulations that some agreements are void for lack of license.

Q. You say that the Swiss courts would not recognize the German foreign currency regulations, even though they stated that such an act was void? A. That is exact. There is a very important case that comes near to the assumption you made me, and it is not the only case about the not-recognition of German foreign currency regulation, and that is the decision of the Swiss Federal
1645 Supreme Court, First Civil Bench, of October 8, 1938, and if Mr. Laufer likes, he may check if the translation I made myself is correct. I have different copies of it.

Mr. Boland: I would like to have this identified. I will not offer it until Mr. Laufer has had a chance to check the translation.

(Accordingly, the document above referred to was marked Plaintiff's Exhibit 102 for identification.)

Mr. Boland: I think we can go ahead with this.

Mr. Burling: May we say that if we have any dispute about the translation, we will bring it up later.

Mr. Boland: We will withhold our offer, Mr. Burling, until such time.

By Mr. Boland:

Q. Doctor, you were referring to the Swiss Supreme Court case? A. Yes.

Q. As a justification for the position you have just stated that the Swiss courts would not recognize the for-

eign currency rules of Germany? A. Shall I explain the case?

Q. Yes, would you, please. A. In that case there was an assignment of a claim of German law, and the court held that the assignment in itself was governed by German law. But then it says from the beginning there
1646 is no discussion about the applicability of the rules of the German civil code because the defendant does not deny it. But the defendant opposes to the claim, saying that the assignment was void because there was no license given by the German Devisenbewirtschaftungsstelle.

That was the first position, and the second, that performance of his duty, as referred to previously, had become impossible, and therefore the duty to be performed had been extinguished to this extent under German law.

Q. Did the court state why it did not apply the German foreign currency regulations? A. Then the court said that he does not apply the German law, the German currency regulations, because it is against the Swiss public order.

Q. And does it explain in detail why it is against the Swiss public order? A. The prohibition of payments—on page 3—of payments of the German Foreign Currency law and the other restrictions about claims are interference with creditor rights in order to spoil them, and these prohibitions are contrary to the basic philosophy of the Swiss legal order. From this follows that the German foreign currency regulations cannot be taken into consideration by a Swiss judge either directly in so far as has been the contents of a claim, nor indirectly in so far as they make the performance impossible.
1647 The Federal Court has already decided in this way in a judgment of September 18, 1934, in the case Nathan-Institut c. Schweiz. Bank fur Kapitalanlagen entschieden, and we can refer to the arguments given there.

Q. Doctor, are you familiar with the philosophy of this particular position of the Swiss court? A. I think you ask me why they said that the foreign currency regulations were against the Swiss public order?

Q. Yes. A. After the first World War Swiss banks and Swiss firms had made large investments—

Mr. Burling: I have an objection. I am not contesting Mr. Kaufman's qualifications if he were called as a historian, but I don't believe that the history of Switzerland or the philosophy of the judges is an appropriate topic for expert testimony.

The Court: I guess the Swiss public order is something like our public policy.

Mr. Boland: Yes, Your Honor.

The Court: You are speaking of what the Court has declared, now?

The Witness: Yes. I would like to say just a few words why they say it is against our public policy.

The Court: Have the courts expressed themselves the way you are about to express yourself?

1648 The Witness: What I say the court says here, as I read to you, that the German foreign currency regulations spoils the rights of Swiss creditors.

The Court: I understood that. But you are going to enlarge on it now. And what I wanted to know is where do you get your information, do you get it from your courts, or just your knowledge of the historical facts?

The Witness: No, in this case the judge says that, and the previous case refers to what they say here as it has been discussed in all Swiss newspapers. In the first case there they say why these German foreign currency regulations interfere with the rights of Swiss creditors.

The Court: In other words, what you are about to say you got from the court's decision in another case which referred to the newspaper items, and so forth?

The Witness: Exactly, yes.

The Court: All right, I will permit him to say on.

By Mr. Boland:

Q. What is the general philosophy behind the position that is taken by the Supreme Court in that case, Doctor? A. Before the German foreign currency regulation, Swiss banks and Swiss firms had made investments in Germany, and under these agreements solvent German firms had to pay back these loans in marks or in gold marks or in Swiss francs in Switzerland, place of performance being Switzerland. Now came these German foreign currency regulations and prohibited these German solvent firms to pay back their loans in Switzerland or anywhere outside Germany.

The Germans could just pay inside Germany, and Swiss creditors could not dispose of this money outside Germany.

That is the reason why the Swiss Supreme Court held that these provisions of the German foreign currency regulations spoils the rights of Swiss creditors, and are against the Swiss public policy, or as they say here, the Swiss public order.

Q. Therefore, Doctor, assuming—getting back to our hypothetical question—that the parties to a gift agreement in which the right had been reserved to call upon the son to set up a usufruct in the future, that if the parties had agreed to waiver which was valid under German law, then if the corpus, being physically located in Switzerland, then the courts would enforce the donor's demand against the donee to establish the usufruct? A. The court—not enforce.

Q. Pardon me, not thereafter enforce any right. A. They would not enforce that because waivers and assignments are both verfuegungen, as discussed this morning, and come under the same rule.

Q. Let us assume, Doctor, that in fact in this case a usufruct had been validly established in Switzerland in connection with these shares of stock, and then thereafter the parties agreed to waive under German law, and the waiver being valid under German

law. A. Being valid under German law?

Q. Being valid under German law, German private law, but invalid under the foreign currency regulations; would the Swiss Supreme Court recognize the foreign currency regulations in that instance? A. They would not recognize the foreign currency regulations as they have cited in this case, in a case before, and in a case later. In a later case they make reference even to an American case.

Q. So I understand your testimony to be that whether or not a usufruct has been created, or whether it has not been created, that if the parties waived whatever rights they had, and the waiver being valid under German private law, that the Swiss courts would not recognize any foreign currency regulation of Germany which declared such a waiver void, is that right? A. That is exact.

Q. So that under such an assumption that the waiver has taken place, that the donors of that gift agreement would no longer have any claim recognizable in Switzerland either against the corpus of the gift, is that right that they would have no claim after having waived, they would have no claim or interest in the corpus of the gift located in Switzerland? A. That is exact,

1651 yes.

Would they have any interests in or claim against any rights of the donee to the gift agreement? A. They would have?

Q. Any? A. Rights in?

Mr. Boland: Will you read the question.

(The pending question was read by the reporter.)

The Witness: They would have no rights more against the donee.

By Mr. Boland:

Q. So that assuming the donee in this hypothetical case is Fritz von Opel, and assuming the donors are his mother

and father, your testimony is that after they had waived, that under Swiss law the father and mother would have no claim whatsoever against the son, is that right? A. Undoubtedly.

Q. And assuming that the corpus of the gift consists of shares of stock in Overseas Finance Corporation, the plaintiff in this case, that after such a waiver the donors, the mother and father, would have no claims whatsoever against the corpus of the gift, is that right? A. That's right.

Q. So that there could be no element of control whatsoever from the Swiss standpoint. A. That's
1652 correct.

Mr. Burling: Mr. Boland, if you have finished this topic, if you would make a statement as to what other points of Swiss law you would like to make, I might be willing to stipulate with you, in the interest of expediency.

Mr. Boland: The other topics are with respect to the Liechtensteinian citizenship, and just two or three questions on domicile under Swiss law.

Mr. Burling: All right; I guess you had better proceed.

The Court: Mr. Boland, I do not like to interrupt you here, but I want to see if I have the trend of your reasoning not on this point but antecedent to it. Do you maintain that this act on the part of Wilhelm von Opel and his wife in 1935 amounted to a waiver of a right that already existed, or do you maintain that no right in rem existed, and that after investigation they found it did not exist, and therefore took no action? Or do you claim one or the other, I do not know which?

Mr. Boland: I am anticipating the Government's defense, Your Honor.

The Court: Maybe that is why it has confused me.

Mr. Boland: I think it probably is. Our position is that a gift was entered into on October 5, 1931, and at that time it was the intent of the parties merely to have a right to call upon the son to set up a usufruct.

1653 The Court: That is what I thought it was, and that that never occurred.

Mr. Boland: Was never called upon.

The Court: And therefore no right in rem ever existed.

Mr. Boland: Yes, Your Honor, and that in 1935 the parties decided to waive whatever rights they had under the gift agreement, even this right to call upon the son to set it up in the future. That is what Dr. Gros was testifying to. And the waiver being valid under German law—

The Court: But they could waive that without any consideration by an oral agreement in 1935, and that is what they did.

Mr. Boland: Yes, Your Honor. Dr. Kronstein testified that an oral waiver in such an instance was valid under private law.

The Court: I follow you now. But the point is, your point then is that no right in rem existed, and in addition to that the right to claim a usufruct in the future was waived, is that right?

Mr. Boland: That is right, Your Honor.

The Court: So that in 1935 every vestige of a legal claim ended.

Mr. Boland: Ended. The confusing element was on behalf, when I said whether the usufruct was created or was not created, the Government, I took from the

1654 cross examination of Dr. Gros is maintaining the position that a usufruct had in fact been created.

The Court: Yes, I know that.

Mr. Boland: And I was just bringing out for the Court that even if one had been created, that the waiver would be effective in respect of the created niessbrauch, which would have dissolved it and put you in the same position, there were no enforceable rights.

Mr. Burling: There is an additional element of confusion, if Your Honor please, because the splitting, the fragmentation of the German law which my friend is engaged in between private law and all law; Dr. Kronstein did tes-

tify, but he did also testify that under German law a license in his opinion would be required, and since it was required and not received, it would be void.

Mr. Boland: If a usufruct had in fact been established.

Mr. Burling: Either way, I believe.

Mr. Boland: I don't believe that is true.

The Court: I just wanted to get Mr. Boland's position. I think I have it now.

Mr. Boland: The main point being brought out through this witness is that the Swiss courts do not pay any attention to this.

The Court: I got that point clearly.

Mr. Boland: Which position, I might add, Your
1655 Honor, we will establish at a later date, is consistent with the American position.

By Mr. Boland:

Q. Doctor, I show you now Exhibit 104-A and 103. A. I think you have to show me another one.

Mr. Burling: I object to any testimony being elicited from this gentleman as an expert, because there is no showing that he is any kind of an expert.

Mr. Boland: I am going to qualify him right now. Will you hold your objection until I finish the questions, please.

Mr. Burling: Surely.

By Mr. Boland:

Q. Doctor, are you familiar with the citizenship laws of Liechtenstein? A. I am familiar with it.

Q. Are you familiar with the citizenship laws of Switzerland? A. I am familiar with it.

Q. Have you had during your practice an opportunity to study the Liechtenstein laws in respect to citizenship? A. We had to do with Liechtenstein law in the law office of my father, and there I became first acquainted with Liechtenstein law.

Q. And are the Liechtenstein laws in general the same

and similar to Swiss citizenship laws? A. The Liech-
1656 tenstein citizenship law is similar to the state law of different states of Switzerland.

Mr. Burling: I move to strike that on the ground that this man is not an expert on Liechtenstein law. I too have had occasion to study the law of Liechtenstein with reference to nationality, and I assert that I am—if I were as much an expert on that law as this gentleman, it clearly would not be for me to testify. The coincidence, or accident that Liechtenstein is contiguous to Switzerland does not mean that he can testify as to the laws.

The Court: I think you may be right, but I do not know how far he is going to go.

Mr. Boland: Your Honor, I would like to make just one statement. The Government has called a person by the name of Mr. Pere in New York as an expert in connection with this matter—not in this case but in several instances—and I think that the qualifications of Dr. Kaufman are much better than his.

The Court: You have not finished the qualifications, have you?

Mr. Boland: No, I have not.

The Court: I will take whatever statements he makes, Mr. Burling, subject to objection and motion to strike.

By Mr. Boland:

Q. Doctor, are you familiar with the manner in
1657 which citizenship is granted in Switzerland? A. I am familiar with it.

Q. And are you familiar in detail with the manner in which it is acquired? A. I am familiar with it.

Q. Are you familiar with the manner in which citizenship is acquired in Liechtenstein? A. Yes, I am.

Q. Are you familiar in detail? A. I know it from the law and from what we had in the office of my father.

Q. Have you had any experience with this law? A. As to citizenship?

Q. Yes. A. Liechtenstein, I myself never had a case in Liechtenstein about citizenship, but I know about Liechtenstein citizenship law for the simple fact that most of the lawyers of St. Gallen, where I am living now, are dealing in St. Gallen and in Liechtenstein at the same time, and we discuss Liechtenstein matters as we discuss our own matters of the state of St. Gallen.

Q. Have you made a study of the laws of Liechtenstein in respect of citizenship? A. I made a study of the law of citizenship of Liechtenstein.

1658 Q. Do you have a copy of the laws of Liechtenstein in respect of citizenship here with you today? A. I have it here with me.

Mr. Boland: The testimony which he is going to give, Your Honor, is to bring out to the Court the manner which is set out by statute in which a person becomes a citizen, and the purpose of this testimony is to counteract the inference which has been given to this court by the Government to the effect that Fritz von Opel bought a citizenship with some cloak around the fact that he paid money for it.

It is a fact that under the statute of Liechtenstein that sets up a citizenship a payment is required.

Mr. Burling: I don't think Mr. Boland can testify as an expert, Your Honor.

The Court: I suppose if you want me to judicially notice the laws of the principality, there is some way to bring those to my attention.

Mr. Burling: We have them in a volume, if Your Honor please, why don't we stipulate certain sections of the Liechtenstein code?

The Court: I do not believe we have qualified him as an expert, as I understand it. I have read some of the laws of Maryland, myself—that isn't a good illustration. I have

read some of them over in Virginia myself, but I do not believe I could qualify on it.

1659 I do not think that is the way to do it, I mean, if you are going to ask him anything as to his opinion on a certain state of facts, or some hypothetical question.

Mr. Boland: I will be glad to ask him on the hypothetical—

The Court: I say that is the part that is objectionable.

Mr. Burling: I offer to stipulate any section of the Liechtensteinian nationality code, or whatever the law is called. I do not think we have any dispute.

The Court: I can judicially notice that, I suppose.

Mr. Boland: If we get that in the record, that is the main thing.

Mr. Burling: If you will tell us what sections.

By Mr. Boland:

Q. Read the sections, Doctor; just the section numbers. A. The main sections are section 6, 7, and 10.

Q. Of what statute? A. Of the Liechtensteinisches Landes-Gesetzblatt of January 10, 1934.

Mr. Burling: I do not think the witness is qualified to state that, but since he has, I will offer to stipulate the text of the Liechtenstein code in the sections named by the witness, if you have the text of the code available.

Mr. Boland: I did not get your question, Mr. Burling.

The Court: I will tell you what to do; between

1660 now and the next meeting, you two see if you cannot stipulate on the Liechtenstein code and any pertinent matters as to which I can take judicial notice.

Mr. Burling: I am sure we can, Your Honor.

The Court: If you cannot do that, you had better get some expert.

Mr. Boland: From Liechtenstein?

The Court: I don't know what to tell you to do, but the point of it is I think our rules on expert testimony are

right strict, and I do not believe I could accept him as that. I could on Swiss law.

Mr. Boland: I have some questions on Swiss law which might be related, Your Honor.

Mr. Burling: I object to anything on the Swiss citizenship law, because there is no testimony, whatever, here that in any way—

The Court: Is there any claim that he is a citizen of Switzerland?

Mr. Boland: No. There is, however, it seems to me this that is important to get before the Court: Here is a man who had a permanent residence in Switzerland for quite a period of time. And he ended up by being a Liechtenstein citizen rather than a Swiss citizen.

Through this witness, I think, when he explains what the law is, and the requirements for Swiss citizenship—
1661 that is, a six-year continuous permanent residence is a very difficult thing to acquire.

Mr. Burling: We can save time. I will stipulate that it would have been impossible in 1939 for Fritz von Opel to have become nationalized in Switzerland.

Mr. Boland: Because of the strict residence requirements. We will stipulate what the law is.

Mr. Burling: I think it is enough. The only point of Swiss citizenship, as I understand it, is that he did not become a Swiss national, and I am willing to concede that he could not have under applicable Swiss law. I do not see that we need go any further than that.

The Court: I think that is all you need.

Mr. Boland: There is another phase to this, and I want to say to this Court that with respect to acquiring citizenship in Switzerland a payment is made for the acquisition of citizenship, and that first of all you have to be approved by the community before you are admitted into citizenship of the state of Switzerland, and that the payment of money in respect of acquisition to citizenship is not unusual.

We in America would look with abhorrence upon such a thing, and I think that is the very inference that the Government is trying to create in connection with Fritz von Opel's acquisition of citizenship, that he paid 32,000 Swiss francs.

The Court: That would be admissible as to Liech-
1662 tenstein, but I do not know about Switzerland. We are not concerned with his troubles in Switzerland, are we, about becoming a citizen? I don't understand.

Of course, I do not know what the Government is going to do. You do these a little out of turn. I do not suppose the Government is going to criticize him for not taking up a membership in Switzerland. If he did, I should think it would be going pretty far afield from this case.

Mr. Burling: I certainly am not, Your Honor. I concede he was ineligible for Swiss citizenship under Swiss law; that being so, the issue of Swiss rationality drops out.

Mr. Boland: Will you stipulate, also, that the payments made in connection with the acquisition of citizenship were normal?

Mr. Burling: Certainly not. I think it highly irregular, and I do not believe for a minute in Switzerland they do things like this, but I do not think it is relevant.

The Court: Mr. Burling, you are not going to offer that he made any large payments in Switzerland, are you?

Mr. Burling: No, Your Honor, I am not going to bring up any point that he did in Switzerland with reference to citizenship.

The Court (To Mr. Boland): He said now, and assured me, he is not going to bring up anything whatever so far as Mr. von Opel is concerned in connection with his
1663 activities in Switzerland in trying to become a citizen of Switzerland.

Mr. Boland: Yes, but he is going to bring up the fact that Mr. von Opel made payments in the acquisition of citizenship in Liechtenstein, and by this witness I can show

that in Switzerland it is normal to make such payments, and also that being one of the states adjacent thereto, that it would not be unusual to have payments made there.

The Court: I think that is non sequitur.

Mr. Gallagher: I think we have enough in the record, Your Honor. We have already introduced Dr. Henggeler's testimony, which was stipulated.

The Court: As I understand it, you are offering it to prove that by reason of the fact that it is not wrongful in Switzerland to pay certain monies in order to get citizenship there, why, I could draw the conclusion that that may be the same situation in Liechtenstein, is that right?

Mr. Boland: Yes. I think that, coupled with the statute, would give you a good insight that the inference drawn by the Government is incorrect.

The Court: I do not believe I can permit that. In fact, these are separate countries, are they not? There is no doubt on earth about that.

Mr. Boland: They are, except that Liechtenstein is under the foreign protection of Switzerland.

The Court: Protection, but it does not have any
1664 other connection; it is not a part of it?

Mr. Boland: No; it is an independent principality.

The Court: That is what I thought.

Mr. Gallagher: Your Honor, I think we could probably drop it here, but I would further like to point out to the Court at this time that we submit that neither this Court nor can the Government contend that any court in this country can look behind the act of any sovereign with respect to the granting of citizenship.

The Court: That is another point, later on. I did not understand from the opening statement that his point was that. But I think we get a little bit off of it now. You are trying to establish, as I understand it, by reason of the fact that in an entirely separate country it is all right to pay money, to try to get a citizenship, that I could draw the conclusion that that same situation would obtain in

a neighboring country which is a different one. I do not think that is logical.

Mr. Boland: We are ready to have the witness cross examined.

The Court: I will sustain the objection, if that is all you want.

1665 Mr. Burling: May I cross examine him now?

Mr. Boland: Yes.

Cross Examination

By Mr. Burling:

Q. Did I correctly understand you to say that in connection with the creation of a usufruct in Switzerland, if shares which are the object of the usufruct, if the shares are placed in a box and the key to the box delivered to a third party who is the agent of the usufructuary, and he agrees to hold the key as agent for the usufructuary, that that is valid delivery and brings the usufruct into immediate existence? A. That is it exactly.

Q. Thank you. Now will you explain what you mean by "German private law?" A. When I used the term of "German private law," I referred to the German Code, and to the provisions contained therein.

Q. I see. Now, German law, the concept of German law, would include all the law that was applicable to a situation, would it not, and not just law in a particular book? A. Once more, please.

Q. I say, if you speak of what the German law is—

A. Yes.

1666 Q. —in a given situation— A. Yes.

Q. —would you not have to look to what all the law in Germany is, and not just the law contained in a particular book? A. Oh, sure. The whole law consists of all the law, yes.

Q. Now, first, aside from the consideration of Swiss public policy, which you stated— A. Yes.

Q. If two Germans make a usufructuary transaction in Germany, which later relates to shares situated in Switzerland, is it not true that normally the Swiss court would determine the validity or non-validity of the usufruct by looking to the German law which is applicable? A. You speak about the agreement?

Q. Yes. A. The agreement is governed by German law, yes.

Q. And the construction of the instrument is governed by German law, is it not? A. It is.

Q. And without reference to questions of foreign exchange law, supposing there was a dispute in a Swiss court as to whether a usufructuary had or had not waived his interest, and the waiver agreement took place
1667 in Germany. Then again the Swiss court would look to the German law in determining the meaning of that transaction? Is that not correct? A. Yes.

Q. Is it not the fact that if you have two Germans inside of Germany, and one of them is a usufructuary and the other has naked legal title, which is the literal translation of the word you said was used in Switzerland for the title holder, isn't it? A. Yes; but I wouldn't like to say it is also the same, although I gave it as the term we use, which as you say, is a literal translation.

Q. At any rate, I ask you to assume two Germans are sitting in Germany— A. Yes.

Q. —and one is the usufructuary of shares situated in Zurich, and the other is the title holder— A. Yes.

Q. —and they engage in a transaction which, under German law, is totally void. A. Yes.

Q. Is it your testimony that the Swiss court might nevertheless attach legal significance to it? A. It depends upon why it is void.

Q. I see. But there are circumstances, you say,
1668 in which a transaction which took place in Germany and was totally void under German law, would never-

theless be given legal effect in Switzerland? A. Only in this case, if it is void because of the foreign currency regulations. In all cases, if it is void under the German law, it won't be held void in a Swiss court.

Q. So you will agree, will you not, that the doctrine you are speaking of is a very remarkable exception to the Swiss law? A. The rule that a court will apply this public order is a very basic rule of Swiss law. But I agree with you that it is an exception to the general rule that you may apply foreign law in a court.

Q. At any rate, it is absolutely exceptional, is it not, the doctrine of the case you cited, which is the decision of the Swiss Federal Supreme Court, First Civil Bench, of October 8, 1935? A. I will say so, that every year there are many, many cases where the doctrine of public order—as you say in this country, of public policy—comes up in the court, and there are many, many cases where the court decided to apply Swiss law instead of foreign law, based upon the doctrine of public policy.

Q. But in respect of agreements entered into, or transactions, within Germany, the common rule, you have
1669 said, is that the Swiss court will apply German law? A. Sure.

Q. And the doctrine in this case is the exception to the general rule? A. To the general rule.

Q. And that is based upon Swiss public policy, is it not? A. Yes.

Q. And what is the Swiss public policy? Will you state that again? A. The Swiss public policy, or the doctrine of Swiss public order, is that no Swiss court will ever apply a foreign law that hurts so deeply the feeling of the Judge that he thinks this law is arbitrary and cannot be applied.

Q. Didn't you state the public policy a little differently before? A. I think you can state it in different terms.

Q. Well, I want to know the particular public policy

that governs in this situation, that is, the situation dealt with in the opinion of October 8, 1935. A. Yes. I would like to state it in the words of the Swiss Supreme Court, as stated in the following case, where the problem of non-application of the German foreign currency regulation came up:

"Although it is difficult to describe in a general
1670 and different way the essence of public order, it is possible to show the function of this doctrine. The doctrine of public order shall hinder the application of foreign law and guarantee the application of the national law in cases where the country would violate definitely the national legal standards. That is the basis of the whole practice of the Swiss Supreme Court, whatever may be the definition of public order in individual cases."

Q. But I want to know what the public order is in this individual case. A. The public policy in this individual case is not to apply the Germany foreign currency regulation.

Q. But you are giving me the conclusion, Professor. What I want to know is the policy leading to that conclusion. A. The policy leading to that conclusion, as stated to Your Honor beforehand, it was the general feeling in Switzerland that the German foreign currency regulations interfere with Swiss creditors in an arbitrary way; and, for this reason, this kind of law should be disregarded by the Swiss courts.

Q. Thank you. Now, in the opinion of October 8, 1935, who were the parties to the agreement that was given effect? A. The plaintiff is a Swiss corporation, and the debtor—

Q. Where does the Swiss corporation reside? Do
1671 you know? A. In Zurich.

Q. And who was the debtor? A. The debtor is Rheinische Handelsgesellschaft.

Q. That is a German corporation? A. That must be a German corporation, yes.

Q. And where did the transaction take place? A. The assignment?

Q. Yes, please. A. The facts as stated in this case, as I showed you, do not show if the transaction has been made inside or outside, because the court had not investigated it, because it said in all events the Swiss courts have to disregard the foreign currency regulations.

Q. I am just trying to find out what the facts are, and the facts you do not know from reading the opinion? A. From reading the opinion, you do not know.

Q. Thank you. And the policy of the court is not to interfere with the rights of Swiss creditors. In other words, not to permit German creditors to say they cannot pay—

I am sorry; I misspoke myself.

The policy is not to permit German debtors to say to their Swiss creditors, "We can't pay you, because we are blocked from paying you by the German foreign exchange law." Isn't that right? A. I would state it so.

1072 Q. Well, do you agree with me? A. Yes.

Q. Fine. And that policy has nothing to do, does it, with a transaction in which both parties are Germans, and where there is no Swiss creditor in any way involved? A. That is right; there is a difference.

Q. The public policy you have just stated has no possible bearing on a situation where there isn't any Swiss creditor in any way involved? Isn't that true? A. No, that is not true, because the Swiss Supreme Court said Swiss courts have to disregard the German foreign currency regulations.

Q. I am talking about policy. A. And for all events, and for this reason the policy has to be strict.

Q. Where do you find that here?—that the policy has to be strict, and not investigate the facts? A. No; the dictum in the case says that this follows, from the fact

that there is in this German foreign currency regulation an interference with credit rights in general; that from this it follows that the German foreign currency regulation cannot be taken into consideration as directly or indirectly. The dictum is broader than just to apply to this individual case.

Q. You agree, do you not, that what you are read-
1673 ing is pure dicta, and the facts in this case having nothing to do with the facts in the case at bar, or the hypothesis put to you by Mr. Boland? A. No, I cannot agree with this statement.

Q. All right; thank you. Didn't you state a moment ago that the policy which dictated this exception to the general Swiss rule was the policy of not having the German foreign exchange regulations interfere with the rights of Swiss creditors? A. It is the policy to protect Swiss creditors, yes.

Q. Thank you. And this case is one in which a Swiss creditor was protected by the exception to the general Swiss law? Isn't that true? A. In this case it is true—

Q. Thank you. And in the hypothesis which Mr. Boland put, and which is in fact a problem in the case at bar, there is no Swiss creditor; so the policy has no application.

Won't you agree with that? A. The policy has still application.

Q. How does the policy of protecting Swiss creditors have application to a case in which there is no Swiss creditor? A. Because, as in 90 per cent of the cases, the German foreign currency regulation may interfere with the Swiss creditor rights, the Supreme Court tells all Swiss courts never to regard it.

1674 Q. Where does it say that? Point out the words where it says that, even where there is no Swiss creditor, pay no attention to the German foreign currency regulations.

Does it say it in this case? A. In this case they made

just the statement I read to you, but that cannot be taken into consideration by a Swiss court, either directly or indirectly.

Q. Yes; but that is in a case where there is a Swiss creditor. A. I agree with you.

Q. And the policy is one of protecting Swiss creditors. I do not understand where you see any authority in this particular case relating to a problem where there is no Swiss creditor.

Mr. Boland: Just a minute, please. Your Honor, I think the stipulation should be read into this record. It is in the record, as I understand—

"It is further stipulated between the parties that Dr. Henggeler would testify that he knows that Mr. Fritz von Opel maintained a residence and home at St. Moritz, Switzerland, since about 1933;

"It is further stipulated between the parties that Dr. Henggeler would testify that he concluded many years ago that Fritz von Opel had established his residence and domicile in Switzerland;

1675 "It is further stipulated that Dr. Henggeler would testify that in his negotiations with the Swiss Tax Office he was advised by that Department of the Swiss Government that it had concluded that Fritz von Opel was a domiciliary of Switzerland subject to the tax imposed by Switzerland and that he knows of his own knowledge that Mr. Fritz von Opel has paid the assessed tax for many years."

In addition to which, the plaintiff in this case is a Swiss corporation; and as to the donee, I believe it has been stipulated that he was a Devisen Auslander. I think the facts establish that this plaintiff, Fritz von Opel, that Fritz von Opel was certainly a citizen of Liechtenstein.

Mr. Burling: In 1935, Mr. Boland?

Mr. Boland: At that time he was a resident of Switzerland.

Mr. Burling: But the question is whether this waiver in 1935 had effect. At that time he wasn't a domiciliary of Switzerland, in my opinion, and there was no stipulation on that.

The Court: I think I will let him have some latitude in establishing what the law of Switzerland is—he has testified on direct—and then let him say what it is, and you can argue the applicability later.

Mr. Burling: What was my question, please?

1676 The Court: I think you both agreed that this didn't agree with this situation specifically, and I think you asked if there were any other decisions.

Mr. Burling: I will ask him that.

By Mr. Burling:

Q. Do you have a decision with you which relates to—Well, first I will ask you the narrow question—do you have a decision with you which relates to the waiver of either a valid usufruct or a claim to have a usufruct created when the waiver takes place between two German nationals, and the agreement takes place in Germany? A. I have no such case.

Q. Do you have any commentary which deals with such a case? A. There is no commentary which deals with a waiver between two German nationals, non-residents in Switzerland, about the waiver inside Switzerland.

Q. Now I ask you the broader question.

What authorities do you have with relation to any transaction between two Germans, which transaction takes place in Germany, which affects rights to securities in Zurich or in Switzerland? A. Between Germans?

Q. Yes, two Germans. A. That they are both in-

1677 side Germany, and brought the case before a Swiss court, you say?

Q. Yes. A. And where it has been held invalid?

Q. What is right.

Mr. Gallagher: Does that question include in it the premise that they are residents of Germany?

Mr. Burling: It includes the words I put in it, if it is desired to ask on redirect.

By Mr. Burling:

Q. Do you understand my question? A. Once more, please.

Q. I ask you if you have any authority in which the Swiss courts refused to give effect to German law where there is a transaction carried on between two Germans, the transaction taking place in Germany, but affects rights to securities physically located in Zurich, or anywhere in Switzerland? A. In all the cases I went through, where German foreign currency regulations then applied, the Swiss court never investigated what was the nationality of the parties. So I cannot from my own memory tell you if in all these cases where the German foreign currency regulations were applied, there was a difference on that, because Swiss courts never investigated about that.

Q. If you cannot tell from reading the opinion, whether Swiss courts investigated it, how do you know that
1678 they investigated it or not? A. No; I can positively tell you that they did not investigate.

Q. How? A. Because if that would be material, they would investigate.

Q. If there is no case in which they did investigate, there are two possible hypotheses, are there not? A. Yes.

Q. One, that such a case never came before them; and, two, that they didn't pay any attention to it. A. Yes.

Q. How do you know which hypothesis is correct? A. I think both hypotheses are possible.

Q. And how do you know which one is right? A. I

think the second must be right, in so far as if this problem would have come up, the Swiss court would have settled it.

Q. If my name were Jones, then my name is Jones, but do you know? A. I think in every case you have first to read the whole case; and if no case can have any distinction drawn as to the nationality of the parties, in three big cases, then you may say nationality is without any importance.

Q. You can tell in this case, can you not, that the
1679 creditor is Swiss? A. In this case I can tell that the creditor is Swiss.

Q. Who is the creditor in the other two cases? A. For that I had really to bring in these two cases. I can tell you that. I have here a decision of the Swiss Supreme Court, First Civil Bench, February 1, 1938—

"In re (1) Allgemeine Elektrizitatsgesellschaft, Berlin"—

So that will be a German corporation—

"(2) Siemens & Halske Aktiengesellschaft, Berlin, gegen, Journaliag A. G., Glarus"—

So that in that case I agree it was a Swiss corporation who was probably plaintiff.

Q. So that we have now two of the three cases governing this subject, where it was a Swiss national— A. Yes.

Q. —who was the creditor being protected. And you don't know about the third case? Is that right? A. Let me think it over. I could not tell offhand the nationality.

Q. Then how do you know that there ever was a case which arose, analogous to the hypothesis, or the case at bar, where the Swiss courts were called on to decide between two German nationals, concerning a transaction carried out within Germany, whether or not to apply
1680 the German law? A. I can just state the Swiss court never investigated about nationality.

Q. How do you know it never investigated, sir, if the

problem never came up? A. In these cases they never investigated.

Q. But in these cases, Professor, it is clear from the face of the opinion that the court was protecting a Swiss creditor. A. Yes.

Q. How in the world does that tell you that the court would not investigate if in fact there was no Swiss creditor anywhere around? A. I think if, in the whole way of argument, they make no distinction between Swiss creditors, but if the Swiss court has discussed the law completely, it shows the court doesn't make a distinction.

Q. In a case involving a Swiss creditor? A. Sure, I agree with you.

Q. You wouldn't expect them to talk about cases where there wasn't a Swiss creditor, if in fact in the case before the court there was a Swiss creditor, would you? A. Can we put it this way?

The Court: I think I understand what each one of you is talking about. He says the language is general, and you say it is not.

1681 Mr. Burling: And I think I bought through this witness Your Honor, that there is no authority, except where there are Swiss creditors.

The Court: I understood that.

Mr. Burling: Then no further questions, Your Honor.

Redirect Examination

By Mr. Boland:

Q. Assuming the hypothesis of a gift agreement in 1931, and a waiver valid under private law in the year 1935, then in the year 1941 the mother and father, after having made that waiver, come to Switzerland and sue the donee of the gift, who is at that time a resident of Switzerland, and sue him in connection with the rights which they had

already waived, is there any question under Swiss law as to whether or not the Court would enforce such rights which had already been waived? A. There is no doubt about it, that the Swiss courts would follow the dicta of the three precedents about the non-application of the German foreign currency provision as stated in these three cases. So that no right whatever of the parents could be enforced in the Swiss courts.

Mr. Boland: That is all, Doctor.
The Court: All right.

(The witness left the stand.)

Mr. Boland: At this time, Your Honor, we would
1682 like to recall Dr. Kronstein.

Mr. Burling: Mr. Boland, if your purpose is to identify the German nationality law, I will stipulate again as to the text of that law.

Mr. Boland: Would you show me what you are willing to stipulate?

Mr. Burling: Any paragraph or provision of the law. I am not aware there is any room for opinion here. I think it is just a question of what the statute provides.

The Court: Is this testimony lengthy?

Mr. Boland: No, it is not, Your Honor.

The Court: Maybe you can tell Mr. Burling what you want to prove by him in regard to the German nationality law.

Mr. Boland: The testimony is particularly in connection with the laws on German citizenship, Your Honor, and in in that connection we would go into what is meant by "domicile" under German law.

The Court: Just tell him what you expect to prove, and see if you can stipulate it.

Mr. Boland: Well, we expect to prove that Fritz von Opel did not in fact maintain a permanent residence in

Germany, and that if he did not in fact maintain a permanent residence in Germany, that he could not have had a domicile in Germany, that being one of the essential requirements.

Secondarily, we intend to establish that the nation-
1683 ality law of Germany requires an application of the German Government to retain citizenship, and if such an application is not made, that the citizenship is lost upon the acquisition of another citizenship.

Mr. Burling: We can't stipulate that this witness could testify to anything concerned where Fritz von Opel lived.

The Court: Oh, no.

Mr. Boland: No.

Mr. Burling: I will stipulate that the German law relating to loss of nationality is as you have stated; that it required an application; that if you became naturalized in another country, you lost your citizenship in Germany unless you applied for and received permission to retain German citizenship.

The Court: Is the time limit fixed?

Mr. Burling: The incident which makes it relevant took place in 1939.

Mr. Boland: The time is upon the acquisition of the new citizenship, Your Honor. That is the relevant time.

The Court: All right.

Mr. Boland: Which citizenship has been stipulated.

Mr. Burling: And the permission would have to be received prior to the acquisition of the new citizenship.

Mr. Boland: Yes.

1684 The Court: All right. That covers that phase of it.

Mr. Boland: And on domicile, you will stipulate that permanent residence is an essential element of domicile in Germany, will you?

Mr. Burling: I don't know. What is the relevance of German domicile, if you please? If your purpose is to establish ultimately, Mr. Boland, that Fritz von Opel did

not have domicile or permanent residence in Germany in the year 1939, I will make that concession.

Mr. Boland: Yes.

Mr. Burling: That he did not, in the year 1939.

Mr. Gallagher: And prior to the time of his Liechtensteinean citizenship, he had neither domicile nor permanent residence in Germany.

Mr. Burling: That is correct.

Mr. Boland: And prior to 1939?

Mr. Burling: I won't go back further. It isn't relevant.

Mr. Boland: If it becomes relevant as to the amount of time he spent every year in Germany.

The Court: Perhaps you had better go ahead with the testimony, if you can't straighten it out.

Mr. Burling: Your Honor, I stipulated all this witness could possibly know with relation to the law, that is, that what I have previously said about laws of citizenship
1685 applied only if you had neither domicile nor permanent residence in Germany; and I do stipulate that at that time, that is, at the moment of acquisition of Liechtensteinean citizenship, Fritz von Opel did not have domicile and did not have permanent residence in Germany.

Mr. Boland: That is not enough, Your Honor. We intend to establish in this case that at no time from 1929 on did Fritz von Opel have domicile in Germany. We don't intend to establish that, as a matter of fact, through this witness, but through the law he will testify to, and applying that to the facts.

The Court: I suppose if it is the law that he did not have it at that time, it would also be the law that he did not have it continuously for ten years before; so that it wouldn't make any difference, would it?

Mr. Burling: No, Your Honor. That is why I say it irrelevant.

The Court: I understand your point. But they want to say, as a matter of law, that if he didn't have it for ten years up to 1939, or for 1939, the law is the same.

Mr. Burling: My point is that the only relevance in this case to either permanent residence or domicile is what the situation was in 1939. And I am willing to concede that, both on the law and on the facts.

The Court: I should think that is true. I should
1686 certainly think that is true.

(To counsel for plaintiff): But I don't know what you are talking about.

Mr. Gallagher: We want the stipulation to go back, Your Honor, to 1929 at least, because under the German law Dr. Kronstein would testify it requires at least six months.

Mr. Burling: But that is totally irrelevant, if Your Honor please, as long as the ultimate result is stipulated to.

The Court: Well, I am trying to get you together. You can either agree or not.

Mr. Burling: I object to any testimony concerning this, after I have made the concession, on the ground that it is irrelevant.

The Court (to counsel for plaintiff): What is it you want to prove?

Mr. Boland: We are willing to take the stipulation offered, Your Honor, but in addition we want to show through this witness that the law as stated in Germany as applied to domicile applied to our situation, and that it cannot be stated this man had a domicile in Germany from 1929 to the present time.

Mr. Burling: But that is irrelevant, except as to nationality. There is no contention either way as to his domicile, it is immaterial. We also concede that he was a
1687 Devisen Auslander at all relevant times.

Mr. Boland: We think the facts will also establish affirmatively that he was a resident of Switzerland and we want to use that in connection with Dr. Kaufmann's expert testimony on the Swiss law. We think in the final argument mention can be made by the defendants of the lack of having this evidence in, if they are in the position to state this man

was not domiciled outside of Germany. We want it clearly shown that he was domiciled outside of Germany.

The Court: What you want to ask him is not the matter of fact?

Mr. Boland: Oh, no, Your Honor—"What is the law of domicile in Germany?"—that is what I want to ask him.

The Court: I will take it over the objection, and subject to being stricken later.

Whereupon, DR. HEINRICH KRONSTEIN was recalled as a witness on behalf of the plaintiff and, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Boland:

Q. Doctor, are you familiar with the citizenship laws of Germany? A. Yes, I am.

1688 Q. And do you know what citizenship law was in effect in 1929? A. The Federal Statute of July, 1913, relating to the acquisition and loss of federal and state citizenship.

Q. Was this statute ever amended, Doctor? A. Oh, yes.

Q. Are you familiar with the amendments? A. Yes.

Mr. Boland: (To counsel for defendant): You are going to stipulate on the loss of citizenship? And also that under Section 25 it is automatic?

The Court: He stated it, but just read in there what he stipulated, so that there won't by any mistake.

Mr. Boland: All right, sir—

It is stipulated by and between the parties that the statute of July 22, 1913, as amended, and particularly sections 24 and 25 of this act, pertain to the loss and acquisition of citizenship in Germany.

It is agreed that under section 25 a German citizen having

a domicile or permanent residence outside of Germany automatically loses German citizenship by acquisition of a foreign citizenship, unless he has been given a license by the German executive agency having jurisdiction, that is, the executive agency having jurisdiction over his last German residence, for the retention of German
1689 citizenship, notwithstanding the acquisition of a foreign citizenship.

The Court: All right.

Mr. Burling: I would like to add a sentence, Your Honor—

In case the German has received such permission from the authority having jurisdiction in the matter, then he does not automatically lose his German citizenship.

Mr. Boland: Yes, I will put that in.

By Mr. Boland:

Q. Doctor, are you familiar with the concept of domicile in German law? A. Yes.

Q. Could you describe briefly what it means? A. German law has two different concepts of domicile, one for infants and wives, and the other for men, for independent persons.

An independent person has his domicile if, first, he has a permanent place to stay, he settles down on a place to stay; and, second, if he has the intention to stay in this place for good, and too, run his life from this place.

Q. You are familiar with the American concept of domicile, are you, Doctor? A. Yes.

Q. Will you distinguish the two, please? A. The German concept of domicile is much closer to the Amer-
1690 ican concept of residence, than it is to the American concept of domicile.

Under German law you cannot have a domicile without having residence, with the exception I gave before, wives or infants; and under German law, furthermore, you can have two or three domiciles, while under American law you can have only one domicile.

Q. Is this word "domicile" defined under German law? A. Yes. The Civil Code, in Section 7, states what "domicile" is, and the courts have, since now 50 years, interpreted the fifth paragraph continuously.

Q. And is the definition in the Civil Code applied to citizenship laws? A. Yes. The domicile concept of the Civil Code of the B.G.B. is applicable to Section 24 and Section 25 of the German citizenship law. That is the decision of many courts in regard to the citizenship law.

Q. May a person have two domiciles under German law? A. Yes.

Q. Under what circumstances? A. If he has two residences, and if he runs his life partly from the one and partly from the other.

For instance, if I live from January to June in the south, and from June to January in the north, and I have a place of residence, and I run my life from the north and
1691 from the south, respectively, I have two domiciles.

Q. So that the main concept in domicile under German law is the permanent residence, number one, that you actually, physically have a house in which to live? A. There is there an objective element of domicile and a subjective element. Both have to come together: One, the objective element is that you have a place to live, and the second is that you have an intention to stay at this place and run your life from this place.

Q. So that without this place there, regardless of what your intent is, you cannot have a domicile under German law? A. No.

Q. And, vice versa, even though you had a place and didn't have the intent to run your life from that place, you cannot have a domicile. A. No.

Mr. Boland: That is all we have of this witness, Your Honor.

Mr. Burling: No questions.

The Court: All right; you are excused.

(Witness excused.)

Mr. Gallagher: As I recollect Your Honor's expression at the noon recess, the plaintiff's case is permitted to be kept open until after the holidays?

1692 The Court: You have only one more witness, your think?

Mr. Gallagher: Yes, Your Honor; and in view of the very, very technical nature of this case we would like to have an opportunity to review this record.

The Court: Oh, yes.

Mr. Burling: I would like to call Mr. Calvin Houghland, so that he won't have to come back.

Mr. Gallagher: We have no objection.

The Court (to counsel for defendant): He is a very short witness?

Mr. Burling: Yes, Your Honor.

The Court: Very well.

Accordingly, CALVIN HOUGHLAND, called as a witness on behalf of the defendant, and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Baum:

Q. What is your full name, Mr. Houghland? A. Calvin Houghland.

Q. And where do you reside? A. Brentwood, Tennessee.

Q. How old are you, Mr. Houghland? A. Thirty-two.

Q. Are you a graduate of any university? A. I

1693 am not a graduate. I attended the University of Vanderbilt and the University of Virginia.

Q. What is your present occupation? A. I run the Direct Oil Company.

Q. And where is that located? A. We operate in five southern states.

Q. And its headquarters? A. In Nashville, Tennessee.

Q. How long have you been engaged in the gasoline business? A. Well, in one connection or another, since I was

14. I have operated this company, the Direct Oil Company, since 1937.

Q. And have you been associated with any other company in the oil business? A. Yes, sir. I was president and general manager of the Winn Oil Company.

Q. And how long were you associated with the Winn Oil Company? A. I started in 1938, and continued until I entered the United States Navy, in 1942.

Q. And upon separation from the United States Navy, you went where? A. I returned back to Tennessee, but I did not continue my activities with the Winn Oil Company.

1694 Q. And do I understand you to say you resumed your activities with the Direct Oil Company? A. That is correct.

Q. Is that company in any way connected with the Spur Distributing Company? A. It is not.

Q. Have you ever met Mr. Fritz von Opel, Mr. Houghland? A. Yes, I have.

Q. Do you see him sitting in this courtroom? A. Yes, I do.

Q. Where is he sitting? A. Right there (indicating), writing.

Q. About when did you first meet him? A. In the winter or spring of 1935, the first time.

Q. Did you have occasion to meet Mr. von Opel in the year 1940? A. Yes, I did.

Q. Can you tell us approximately when and where? A. It was near Nashville, at the home of my father and mother, and it was in the early summer of 1940.

Q. By "early summer", what month do you have in mind? A. I am not completely sure as to the month, except it was either the latter part of May or the first part of July. I know it was not June, because I got married on June 1st and was gone the entire month of June.

1695 Q. And you recall it was around the time of your marriage? A. Yes, it was.

Q. Now, can you relate to us briefly the events of that occasion at your father's home in Tennessee? A. Yes I can.

Q. Will you do so, telling us who was present and under what circumstances? A. I was having dinner with my family, and Fritz von Opel was also there visiting in the house. And after dinner we adjourned to an upstairs sitting room and had a general discussion, mostly being taken up with Mr. von Opel telling us of his exploits and of his inventions.

Particularly I remember he said he was the inventor of the rocket, which impressed me very greatly. I also remember that we heard a newscast, and at that time the war situation looked very desperate and black; and I remember it so.

And Mr. von Opel spoke up and said—I remember I remarked that the war would take a very long time to get over with, and might even involve the United States—and Mr. von Opel corrected me at once and said, "It will not take a long time. By using rockets and secret weapons, we will finish up this war in no time at all."

Q. Who was present during this conversation? You referred to your family. Will you specify the individuals? A. My mother was there, and I don't remember whether it was my wife or my wife to be. But I do remember she was there. And my father was there also.

Q. Did your father hear this conversation? A. I am not sure. The conversation was over several hours, and I recall that particular night that he stretched out on the day bed and went to sleep, and I am not sure that he heard this part of the conversation or not.

Q. At the time of this conversation, did Mr. von Opel make any reference to military events at that time? A. Yes; he was very positive and showing pleasure at the progress that the Germans were making in France and in the low countries; and was quite pleased, because he stated

that some of his inventions were playing a particular part in it.

Q. When was the next time you saw Fritz von Opel? A. I think I saw him, I think the next time—I am sure that the next time I saw him was in 1941, February 4.

Q. Where did you see him at that occasion? A. At Palm Beach.

Q. How is it that you happen to be able to remember the date? A. I took it from my diary before I came up here.

Q. What were you doing in Palm Beach? A. My wife and I were visiting in Miami and we called up Mr.
1697 and Mrs. von Opel and they invited us to come up and spend the day; and we went sailing with them in the afternoon and stayed for dinner at night.

Q. At their home? A. At a home, as I remember, that they had rented.

Q. In which they lived? A. Yes, in which they lived.

Q. Is there any particular event during the course of that dinner which fixed itself upon your mind? A. Yes, there was.

Q. Will you please tell us what it was? A. Just as we were sitting down to dinner, which Mrs. von Opel had prepared, the phone rang and she answered it and called Fritz von Opel to the phone. And he said it was long distance, and he jumped up from the table and went into the hall, which was the adjoining room, and talked for some 25 or 30 minutes in German. And when he returned, he apologized for having been gone so long, and said he was talking to business associates in Hungary.

Q. How do you happen to recall this incident? A. Well, I before or since have never been around an overseas call, and I was very impressed with the cost that it must have involved, with such a call. And my wife and I talked about it in driving back to Miami that night.

Q. Did Mr. von Opel tell you at this time what was
1698 the subject of his conversation on the telephone? A. No; I don't recall that he did.

Mr. Baum: That is all.

Cross Examination

By Mr. Ingoldsby:

Q. Mr. Houghland, would you say it would be a fair statement to say that you and your father, with regard to one another, occupy the customary devotion which exists between father and son? A. I certainly would.

Q. And your employment at the present time is president of the Direct Oil Company? Is that correct? A. That is correct.

Q. How long have you had that job? A. I founded the company in 1937.

Q. And before that you were with the Winn Oil Company? Is that correct? A. That is not correct.

Q. Didn't you say you were with the Winn Oil Company at one time? A. I was. I took over the operations of the Winn Oil Company in 1938.

Q. And the Winn Oil Company, prior to—let me see if I get this—

Winn Oil Company remained a part of the Spur
1099 system, did it not? A. Yes, it always has been and still is.

Q. Wholly owned by Spur? A. That is my knowledge, yes.

Q. And where did you get the money to set up the oil business that you finally set up? A. I borrowed it from the American National Bank in Nashville.

Q. Is that Mr. Davis' bank? A. Mr. Davis is, I assume, a stockholder of the bank and works there. He is employed there, yes.

Q. In what position is he employed? A. I think he is chairman of the board now. He was president of the bank at the time I made this loan.

Q. And he is chairman of the board now? A. That is my recollection.

Q. And how much money did you borrow? A. Four thousand dollars.

Q. And who put up the collateral for that loan? A. I put up the collateral, in the filling station which I built myself. I signed over the filling station and all its property and equipment, to the bank as collateral.

Q. Did you put any of your own money into it? A. I had no money.

Q. Then you really started this business with no
1700 money at all? Is that correct? A. Four thousand dollars borrowed capital.

Q. Did your father sign a note on that? A. Yes, he did.

Q. So it was put up on his security? Is that correct? A. No, it wasn't put up totally on his security. I put up the security. He signed the note.

Q. And how large a business is that today? A. How do you mean that, sir?

Q. Total volume, dollar sales? A. I think it will do just short of a million dollars this year.

Q. You will do about a million dollars business a year, you say? A. I think we will reach that this year.

Q. And where do you operate—just in Tennessee? A. In five southern states.

Q. You said you didn't finish college, did I understand you to say? A. That is correct.

Q. How far did you go in college? A. Two years.

Q. I want to ask you this:

Did you discuss with your father the testimony which you gave today, before you gave your testimony?
1701 A. Yes. Yes, I have.

Q. Did you tell him what you were going to say? A. Yes, I in general discussed it.

Q. You have told him that many times, haven't you? A. Not many times, no.

Q. You have discussed this case with him many times, haven't you? A. I certainly have.

Q. And you have discussed it with representatives of the Government, haven't you? A. Yes, I have—Mr. Burling and Mr. Baum.

Q. When was the first time you gave any statement to the Government in connection with this case? A. Oh, I think I talked my first time with Mr. Burling last spring or summer. I am not too clear on that.

Q. Last spring or summer was the first time you talked to Mr. Burling? A. I think so, yes.

Q. You talked to Mr. Burling about this case last spring or summer? A. I am not sure about it.

Q. Can you tell me when is the first time you talked to Mr. Burling about the case? A. I can't fix the date. I am nervous, and I don't remember. Let me see. I am
1702 sure I talked to him this summer, yes—this past summer.

Q. You are sure you talked to Mr. Burling this past summer? A. Yes.

Q. Would I refresh your recollection any if I told you Mr. Burling didn't come into this case until about eight weeks ago? A. I do remember that now, and you are correct. Eight weeks ago. This is December. That would be late summer, wouldn't it?

Q. That would be early November, wouldn't it, or late October? A. Eight weeks, two months, and this is December—late October, possibly.

Q. When was the first time you talked to any representative of the Government about Fritz von Opel? A. Just eight weeks ago, when I talked to Mr. Burling, is the first time I remember talking to the Government.

Q. Are you sure about that? A. No. I am wrong. I talked to Mr. Baum. That is the summer visit I had in mind. That was last summer. I talked to Mr. Baum.

Q. Prior to that, did you talk to anybody in the Government about Fritz von Opel? A. I don't remember
1703 discussing it with anybody in the Government, and knowing that they were in the Government.

Q. When was the first time you told anyone about the statements which you have attributed to Mr. von Opel? A. Well, I have discussed them with members of my family, and perhaps to some intimate friends, since that happened.

Q. But the first time you ever talked to anyone connected with the Government about Fritz von Opel, to your knowledge was last summer or early fall? A. Yes; that is all that I know of to my knowledge at this time.

Q. Do you recall ever talking to an FBI agent in connection with this case? A. No, I have never talked to an FBI agent.

Q. You are sure about that? A. I am sure about that.

Q. Now, I want to direct your attention to the statement in 1940, which you attribute to Mr. von Opel, in which he said they would finish the war, or "We will finish the war in no time at all, with rockets and secret weapons."

Did you have a discussion with him about what secret weapons he was talking about? A. I don't recall any secret weapon, other than his discussion of the rocket, and him saying he was the inventor of the rocket.

1704 Q. And you didn't discuss the point any further?

A. About other secret weapons?

Q. Yes. A. Is that the question?

Q. Yes, that is my question. A. Oh, he just made inference to other secret weapons. There were no other ones mentioned specifically.

Q. And I want to talk to you about this date of February 4, 1942. Did you give that date—

Mr. Gallagher: 1941.

By Mr. Ingoldsby:

Q. Did you give that date, February 4, 1941? A. Yes, I did.

Q. At that time you were about 24 or 25 years old? Right? A. Well, I am 32 now. I will have to figure it out.

Q. All right. Let us figure it out. You were about 24,

weren't you? A. Well, let me see. Forty-one from forty-eight is seven—about 25.

Q. And you were having dinner at Mr. von Opel's place in Florida that night? A. That is correct.

Q. As a matter of fact, you were down there on your honeymoon at that time, were you not? A. That is incorrect.

1705 Q. You were not? A. No.

Q. And the reason that you remember this so distinctly is because you put it in your diary? Is that correct? A. It isn't a diary. It is a little calendar which I have kept for many years, that I keep in my desk and I always keep up with the places I have been, in order that I can prepare expense accounts which I turn over to my company. And I have that now, and I have kept them for many, many years.

Q. Then all that that would establish would be the fact that you had been at Mr. von Opel's for dinner, wouldn't it? A. The diary?

Q. Yes. A. All the diary said—and I can repeat it verbatim—is Palm Beach, February 4, 1941. That is all there was on that page.

Q. And from that you state that as the date when you were at Mr. von Opel's for dinner? A. Yes, that is correct.

Q. So that when you were attributing to him the statement that he came back to the table and said he had been talking to business associates in Hungary, you are

1706 relying entirely on your memory? Is that correct.

Q. And if the statement had been that he had talked to business associates from Hungary, you would then be in error, wouldn't you? A. From Hungary?

Q. Yes. A. No; I remember distinctly he said "to Hungary", because I don't recall the conversation, but there was some reference even at the dinner table about the expense involved in a call of that nature. I have tried to recollect the exact conversation, but can't.

Q. You don't recall he said business associates to Hungary? A. He talked to Hungary to business associates.

Q. You stated that before, the first time you stated it, as stating he had talked to business associates in Hungary. Isn't that correct? A. In essence it is the same, isn't it?

Q. In words, it is a great deal of difference.

Did you bring that diary with you? A. No, I did not.

Q. Let me ask you this: While the war was going on, you never thought it important to report any of these conversations to the FBI? A. No, I didn't think it was
1707 important that I report those conversations to the FBI.

Q. Did you think it was important that someone report them? A. I was under the impression that perhaps—

Q. Just a minute.

Mr. Burling: I submit he should be allowed to answer that question.

Mr. Ingoldsby: Will you read it back, please?

The Reporter (reading): "Question: Did you think it was important that someone report them?"

By Mr. Ingoldsby:

Q. All right. Can you answer that? You can answer that yes or no, can't you?

Mr. Burling: I submit plaintiff's haven't produced a witness yet who has answered yes or no.

The Court: (To the witness): Can't you say yes or no, and then following it up with whatever else you want to say?

The Witness: Will you restate the question to me?

The Court: He said he wanted to know if you thought it was important that somebody reported those circumstances.

The Witness: I certainly feel it was important and feel

it is important now, that that information should be given to the Government.

(To Mr. Ingoldsby): Does that answer your question?

By Mr. Ingoldsby:

1708 Q. No, that does not answer my question. My question is, did you think it was important, while the war was going on, that the Government have the information you have just given here? A. Yes.

Q. You did think it was important? A. Yes.

Q. And you didn't give it to them at that time? A. I did not.

Q. Yet you were the only one who knew it, were you not? A. Absolutely not. It appeared in the newspapers at that time.

Q. What appeared in the newspapers?—the conversation that happened in your father's house in Nashville? That didn't appear in the newspapers, did it? A. What information, specifically, do you want me to give you?

Q. You have only testified concerning two things—one, the conversation in your father's house, and the other the statement made in Florida. My question is, did either of those things appear in the newspapers? A. Certainly the conversation in Florida did not, no.

Q. Well, did the conversation in your father's house appear in the newspapers? A. Not as conversation, no.

1709 Q. So that the fact is that the only time you considered this information important was at the time of this case? Isn't that correct? A. No; that is incorrect.

Q. Or the only time you considered it sufficiently important to give the information to the Government was at the time of this case? Isn't that correct? A. For me personally to give the information to the Government?

Q. For the Government to get the information. A. Will you restate that question in whole?

Q. My question is this: The only time you considered the information which you have just given, of sufficient importance for you to— A. Me personally?

Q. You personally—to turn the information over to the Government, was at the time of this case? A. That is correct.

Mr. Ingoldsby: That is all.

Redirect Examination

By Mr. Baum:

Q. Mr. Houghland, I believe you testified in answer to Mr. Ingoldsby's questions that you told other members of your family about the conversation which you have
1710 testified to today. Is that correct? A. Yes, that is correct.

Q. And do I assume correctly that by "members of your family", you included your father? A. Yes, that is correct.

Q. And did you tell your father about these conversations at or about the time they took place?

Mr. Ingoldsby: I object.

Mr. Burling: That is entirely admissible, if Your Honor please, because Mr. Baum is endeavoring to reply to an inference that this witness' information did not reach the FBI, and we are trying to establish that it did reach the FBI, and therefore it is relevant to rebut the inference which was created. We want to show he told his father and he knew his father told the FBI.

The Court: I think he can bring out, Mr. Ingoldsby, he felt it was his duty to do it, and if he didn't do it, if he has an explanation, he ought to be permitted to give it.

Mr. Ingoldsby: All right, Your Honor.

Mr. Baum: May I have the question re-read?

The Court: You asked if he told his father.

The Witness: Yes, I told him.

By Mr. Baum:

Q. And you know, do you not—

Mr. Ingoldsby: If Your Honor please—

Mr. Baum: Mr. Ingoldsby, I think you might learn
1711 a simple rule of courtesy.

The Court: Address your remarks to me, gentlemen.

Go ahead.

By Mr. Baum:

Q. Do you know whether your father was interviewed by the FBI during this past war? A. Oh, I know it positively, sir.

Q. Did he tell you he was interviewed by the FBI?

Mr. Ingoldsby: I object, if Your Honor please.

Mr. Baum: I will withdraw it, Your Honor.

That is all.

The Court (to Mr. Ingoldsby): What is your objection?

Mr. Ingoldsby: The witness is telling what his father told him.

The Court: Yes.

Mr. Ingoldsby: I object on the ground of hearsay.

The Court: He testified in answer to your question that he personally didn't tell them. If his father told him that he told them then I think he is entitled to bring that out, that is, if you are drawing any inference from the fact that he didn't tell them.

I will permit it; go ahead.

Mr. Baum: I have no further questions, Your Honor.

The Court: Don't you want the answer?

Mr. Burling: I want the answer, Your Honor.
1712 The Court: All right; go ahead and ask him.

By Mr. Burling:

Q. Did your father tell you he passed this information on to the FBI? A. That is correct.

Mr. Burling: That is all.
The Court: Is there any recross examination?
Mr. Ingoldsby: No, Your Honor.
The Court: Well, January 3rd, gentlemen, at 10 o'clock —and my best wishes to all of you for the holidays.

(Accordingly, at 4:15 p.m., the trial was adjourned until Monday morning, January 3, 1949, at 10 o'clock a.m.)

* * * * * *

1715 PROCEEDINGS

Mr. Gallagher: Your Honor, at this time I offer in evidence Plaintiff's Exhibits 105 through 159, inclusive, which are covered by a stipulation entered into between counsel for the defendant and the plaintiff, identified as Plaintiff's Exhibit 160, the said stipulation reading as follows:

"It is hereby stipulated by and between the parties that if Adolph Gaeng were called as a witness for the plaintiff, he would testify that the list of books and records attached hereto and made a part of this stipulation are books and records kept in the regular course of business of Frima, Uebersee Finanz-Korporation, A. G., and Fritz von Opel through the year 1942; and it was the regular course of business to keep such books and records.

"It is further stipulated that all of the books and records described in the attached list had been made available to the defendant.

"Dated: January 3, 1949."

It is signed by counsel for the plaintiff and the defendant.

I now offer those exhibits and Plaintiff's Exhibit 160."

(Accordingly, the exhibits referred to in Plaintiff's Exhibit 160 were received in evidence as Plaintiff's Exhibits 105 through 159, inclusive.)

1716 (The stipulation just read was marked as Plaintiff's Exhibit 160 and received in evidence.)

Mr. Gallagher: At this time I should like to recall Mr. von Opel for just a few minutes with respect to two of the exhibits which we left off at the time we were having trouble identifying them.

Thereupon, FRITZ VON OPEL was recalled as a witness and, having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Gallagher:

Q. To refresh your recollection, Mr. von Opel, before we recessed we had been discussing Plaintiff's Exhibits 84 and 85, pages of which Mr. Burling had shown you, which reflected certain figures with respect to a Consortium O. As I recollect, you had stated that those showed different financial transactions that had taken place at that time.

I now show you what is identified as Plaintiff's Exhibit 153, a book of the Uebersee Finanz-Korporation, and direct your attention to pages 70, 71, and 72, page 70 being headed, "Fritz von Opel," page 71 being headed "Consortium O," and page 72 being headed "Frima Trust Fund," and I will ask you if you can explain what those pages reflect. A.

They reflect corresponding pages of my own books or
1717 of Frima's books.

Q. Would it be correct to say, Mr. von Opel, that the first of the accounts was "Fritz von Opel?" A. Yes, sir; that is correct.

Q. And that that is the way you testified with respect to the balance sheet? A. Yes.

Q. Then it became "Consortium O?" A. Yes, prior to the formation of Frima, it was called Consortium O.

Q. Then it became— A. In 1934 it became Frima Trust Fund.

Q. Mr Burling also showed you two exhibits which were taken from a book now in evidence as Plaintiff's Exhibit 152, headed, "Inventorum Book," a book of the Uebersee Finanz-Korporation, commencing 1937, pages 24 to 29, which pertain to the years 1940 and 1941, and reflect the investment by Uebersee in Transdanubia.

Mr. Burling addressed your attention to a figure 102.360 in 1940. Can you state what that amount reflects? A. That is a total amounts shown on konto korrent—accounts receivable.

Q. As of the end of 1940? A. As of the end of 1940.

Q. Then, I direct your attention to page 29 of
1718 this exhibit, the figure 109.918. Is that konto korrent— A. Pardon me; correct the figure; 109.91850 Swiss francs.

Q. That is the figure as of the end of 1941? A. Yes, sir.

Q. That is the figure showing an increase in the investment of 7558.50 Swiss francs; is that correct? A. Yes, that is correct.

Q. I now show you Plaintiff's Exhibit 154, a page headed, "Transdanubia Bauxite, A.G., konto korrent," and direct your attention to the last line, March 3, 1941, 10,000 pengos, or 7558.50. Can you state what that figure reflects? A. That reflects payment to the lawyer, Dr. Gyula Salushinscy, of 10,000 pengos or, in Swiss francs, 7,558.50 Swiss francs; and this payment was made on March 10, 1941.

Q. Does this translation reflect what is on that page, Mr. von Opel? A. Yes; it is the last entry on this page.

Mr. Gallagher: I will offer this translation.

(The translation referred to was marked as Plaintiff's Exhibit 162 and received in evidence.)

Mr. Gallagher: I have no further questions of Mr. von Opel, Mr. Burling. Oh, I am sorry; I have one other. I did not see this.

1719

By Mr. Gallagher:

Q. Mr. Burling also introduced in evidence several documents with respect to collateral which was posted on behalf of Uebersee with the Union Bank of Switzerland with respect to a loan made by Transdanubia from the Hungarian Escompte Wechslerbank. I now show you Plaintiff's Exhibit 161, which consists of a number of pages from an exhibit of the plaintiff here, a copy of which has been given to the defendant, and ask you whether or not—

Mr. Burling: If the Court please, I think there is some confusion. I gave it to you earlier. 161 is a single sheet. May I inquire if 161, which is one single exhibit—

Mr. Gallagher: One single exhibit for the purpose of ease in not putting all in.

By Mr. Gallagher:

Q. I ask you if you can state what those pages reflect, Mr. von Opel. A. They reflect guaranty put up by Uebersee Finanz-Korporation through the Adler Bank with another Swiss bank for the purpose of a loan which Transdanubia had obtained from the Hungarian bank.

Q. Will you state when the guaranty first commenced? A. The guaranty was first given on October 7, 1939.

Q. In what amount? A. It was in amount of
1720 5,000 Swiss francs.

Q. Was that amount increased? A. This amount was then increased to 20,000 Swiss francs.

Q. On what date? A. On December 23, 1939; and it was then increased to 32,000 francs and remained at this figure on April 16, 1940.

Q. Now, I notice there are several other pages included in this exhibit, Mr. von Opel. Would you explain what the other pages reflect? A. This guaranty had to be renewed quarterly, and we had to pay quarterly commission on renewal of this guaranty.

Q. Was this a transaction by Uebersee with the Swiss bank? A. With the Swiss bank, yes.

Q. If I understand you correctly, a commission was paid by you to the Swiss bank? A. To the Swiss bank to renew its guaranty.

Q. As evidenced from the exhibits which the defendant has heretofore introduced, that collateral was subsequently returned on November 17, 1942; is that correct? A. Yes, that is correct.

Mr. Gallagher: That is all.

Cross Examination

By Mr. Burling:

1721 Q. You never saw any of these books, did you, until you saw them in your lawyer's office in Washington? A. I didn't see those slips, but I gave the orders.

Q. I say, you didn't see the books? A. Not the books, no.

Q. So what you have testified to it what you were told by your lawyers and Professor Kaufman about the books; is that right? A. Yes.

Q. You don't have any personal knowledge about this at all? A. They reflect my orders.

Q. You don't have any personal knowledge about what is in the books, do you? A. I have personal knowledge that I gave orders, and apparently it had to be in the books.

Mr. Burling: All right. Thank you.

Redirect Examination

By Mr. Gallagher:

Q. I understand by that, Mr. von Opel, that you gave orders with respect to the giving of the collateral originally and the increases in it? A. Yes. The increase—I think the last was April, if I remember correctly, April, 1940.

Mr. Gallagher: That is all.

1722 (The witness left the stand.)

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EVIDENCE ON BEHALF OF THE DEFENDANT

Thereupon—

JOHN MASON HOUGHLAND was called as a witness and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burling:

Q. Please state your name. A. John Mason Houghland.

Q. Where were you born? A. I was born in Spencer County, Indiana.

Q. Will you state briefly what your education has been?

A. I am a graduate of the University of Chicago and was educated as a geologist.

Q. What has your business been since you were graduated from the University of Chicago? A. I have been in the oil business.

Q Directing your attention to the year 1928, did you found any business in that year? A. I founded the Spur Distributing Company, yes.

Q. Will you state briefly what Spur Distributing Company was? A. I had conceived the idea that I
1734 might improve the system of retail marketing which had been in effect and was in effect throughout the United States.

Q. Retailing marketing of what? A. Of gasoline and oil.

Q. Filling stations? A. Filling stations, yes, sir.

Q. What was the idea that you had? A. My idea was that by putting large storage tanks in the filling stations themselves, I might by-pass bulk stations, or the wholesale activity and expense, and reduce the handling cost of the material.

Q. Did the word "Spur" mean anything in your business? A. It means a railroad spur. I mean the stations were located on railroad spurs, so I could ship in to those stations in tank cars.

Q. Are you presently associated with the Spur Distributing Corporation? A. I am, yes, sir.

Q In what capacity? A. As president and general manager.

Q. How many stations does Spur have today? A. 254.

Q. Roughly speaking, where are they located? A. They are located east of the Mississippi River, except a few stations: One station in Missouri and a few sta-
1735 tions in Arkansas; and there are no stations in the north, in New England or Michigan and Minnesota, and that area.

Q. Have you been consistently, throughout the period from 1928 to date, president of the board? A. Yes, sir.

Q. Now, directing your attention to the year 1930, did you have any problem of financing in that year? A. I did, yes.

Q. Will you state briefly what took place? A. Well, I felt that we had pretty well established—I started this Spur with very small capital, and we had pretty well established that the basic principle—new principle—of marketing was a sound one and that by getting more capital we could expand it, and so I went to New York and found a firm by the name of Burden Cole & Company, who were investment bankers, and they undertook an underwriting of the stock to raise more money for this expansion.

Q. Was a new issue of stock arranged at this time? A. Yes.

Q Was there any special provision or unusual arrangement made in connection with the shares? A. Yes, there was. With each share there were warrants, and these warrants stepped up in price according to the time interval that had elapsed before they were exercised. That
1736 was in order to enable investors to have an opportunity to improve their holdings after they were satisfied that it was a profitable investment.

Q. Now, prior to the floating of this stock in 1930, who had control of the corporation? A. I did—that is, I together with one relative and one close friend.

Q. In other words, a group of your friends? A. That is right.

Q. At the time this stock was issued, did you make any arrangements or retain any rights with respect to control? A. We did. We made arrangements so that by the exercise of the warrants available to us, we could remain in control in case these other warrants were exercised.

Q. That is, you kept warrants yourself? A. That is

right; kept enough warrants to remain in control if we exercised them.

Q. Did there come a time when you learned that a large block of Spur stock had come into the hands of foreign investors? A. Yes, sir.

Q When was that? When did you learn that? A. Well, when I learned that it was foreign investors was in July of 1932.

Q. Will you state how you learned that a large block of the Spur stock had been acquired by foreign investors? A. I received a letter from Theodore Hoffacker.

1737 Q. What did he say to you in that letter? A. He announced that he represented a group which had obtained control of our company; and then his statement was confirmed by the transfer agent in New York in a telephone call.

Q. By the way, have you at my request looked for this letter in your files? A. I have.

Q. Were you able to find it? A. I was unable to find it.

Q. Did Mr. Hoffacker request anything of you? A. He requested that a directors' meeting be called at once.

Q. Did he state the place at which he wished the meeting to be called? A. He said he wished it to be called in New York.

Q. Did you meet anywhere in respect to this request? A. I went to New York, yes, sir.

Q. With whom did you go? A. I went with Henry Hines, vice president of the company.

Q. Did you go with anybody else? A. I met there Joseph B. Thomas, who had been associated with me in the company.

Q. Where in New York did you meet? A. We

1738 met at the office of our company attorney, whose name was Allan Fox. His office was on Trinity Place.

Q. Did you meet Mr. Hoffacker there? A. Yes, he came to the meeting.

Q. At that time did you have a conversation with Mr. Hoffacker about the Spur Distributing Company? A. I did, yes, immediately—either at the end of the meeting or immediately thereafter; I am not sure which time.

Q. Will you state in substance what that conversation was?

Mr. Ingoldsby: I think I will have to object to this, Your Honor.

Mr. Burling: May I ask the ground of objection, if Your Honor please?

Mr. Ingoldsby: It sounds to me like it is hearsay.

Mr. Burling: Fritz von Opel has testified that he made Hoffacker agent of the plaintiff corporation. He was managing agent of it and manager its investments Anything said by Hoffacker is an admission by the plaintiff corporation through its agent.

Mr. Ingoldsby: I do not recall that that was the testimony.

Mr. Burling: Could I have a moment to look at the record, Your Honor?

The Court: I will take the testimony subject to
1739 its being connected up later. You can move to strike it if it is not connected.

By Mr. Burling:

Q. Will you state what Mr. Hoffacker said to you? A. I asked him whom he represented, and he said, "I represent the von Opel family."

I said, "Who are the von Opel family."

He said, "They are the Fords of Germany, and they are people of immense wealth and can be very useful to you and to the Spur Company."

That is the general substance of it.

Q. Did Hoffacker say anything to you as to your future

relationship to Spur? A. Yes. He said that he wanted me to remain in the management of Spur.

Q. Did he say anything about directors? A. Yes. He asked that two new directors be appointed, and they were appointed on that occasion.

Q. Who were they? A. They were Theodore Hoffacker and the Baron Werner C. von Kle..m.

Q. Baron von Klemm? A. Baron von Klemm, yes.

Q. When did you first hear the name Uebersee
1740 Finanz-Korporation? A. I cannot recall the exact time I heard the name, but it was at some time later, and the only definite knowledge I have of that time was some time in November of the following year.

Q. Did Hoffacker at any time tell you anything about Uebersee Finanz-Korporation? A. I can't recall his having said anything about Uebersee. He may have, but I can't recall it.

Q. Now, after Hoffacker told you that the von Opel family had acquired control of Spur, did you have any negotiations with anyone concerning the warrants which you had retained yourself? A. Yes.

Q. Will you state what those negotiations were and with whom they were carried on? A. Well, they were carried on with Hoffacker, and we had a voting trust on the original stock, which he wanted dissolved, and he wanted me to surrender my rights on these stock warrants, and I very naturally didn't want to do so.

There was a good deal of negotiation that went on through this period, and that finally resulted in contractual relations later.

Q. The contractual relations—

Mr. Ingoldsby: May it be made clear that my objection to all the testimony relating to Mr. Hoffacker stands
1741 on the same ground on which it was previously made?

The Court: Yes.

Mr. Burling: If Your Honor please, having in mind Your Honor's remark that he did not wish to leave rulings open, may I point to page 1021 of the record:

"Question: And did you arrange that the proceeds of the Opel shares were to be invested and managed by Hoffacker & Company?

"Answer: Yes, I had a contract with him of this kind. I don't remember the details. I think he operated this account."

This is Mr. von Opel testifying.

"Question: And he bought and sold securities for Uebersee?

"Answer: Yes.

"Question: In 1932 and 1933? Right?

"Answer: Yes, it is possible.

"Question: And in the spring of 1932 you authorized Hoffacker to acquire the majority interest in an American corporation called Spur Distributing Corporation, didn't you?

"Answer: In the spring of 1932?

"Question: Yes; wasn't that when it took place?

"Answer: Yes, it is possible.

"Question: I am not asking you whether it is possible, I am asking you if that is not when it happened.

1742 "Answer: I think prior to this time I had already acquired about five or ten thousand shares. And later on I acquired the majority. That is correct."

Then, skipping to the bottom of the page:

"Question: And did you then cause Uebersee to give Hoffacker proxies so he could vote the Spur stock?

"Answer: Yes."

Mr. Ingoldsby: Then, I would say that undoubtedly with respect to the authority given to Mr. Hoffacker, Mr. von Opel would be bound by those statements provided they commenced in the spring of 1932. As I understand it, the first date—

Mr. Burling: The witness is now testifying to what took place in November, 1932, as I understand it.

Mr. Ingoldsby: All right.

The Court: All right. Then I will definitely rule it in evidence.

By Mr. Burling:

Q. What was the outcome of the negotiations between you, Uebersee, and Spur with relation to your warrants? A. Well, the outcome was that I gave up my warrants and signed a contract with Uebersee which gave me a call on their Spur stock in the event that they should ever sell it, a call at the price—a 30-day call at the price that they decided to sell it.

1743 Q. That is to say, if Uebersee wished to sell and had an offer from a third party, they must have offered it to you, first, at that price, and you had 30 days in which to take up the offer? A. Correct.

Q. Did you receive anything else besides this contract? A. Yes. I then entered into—Upon their arrangement, as their stockholder, I entered into a management contract with a profit participation with the Spur Company, and in consideration of my surrender of my warrants, the money for which was not needed at that time, an arrangement was made whereby I was to receive over a period of years, on an additional profit participation basis, after certain payments had been made to the stockholders, a sum of money which would total $200,000 when it was paid—when it was finally paid or accumulated.

Q. Now, at the time you entered into this contract, had you ever seen Mr. Fritz von Opel? A. No.

Q. You recognize him here in court, do you? A. Yes.

Q. When and where did you see him for the first time? A. The first time I saw him was in the late summer of 1934 in Paris.

Q. Will you state how you happened to be in
1744 Paris? A. I was in Paris with Mrs. Houghland on a tour.

Q. A pleasure trip? A. A pleasure trip.

Q. How did it come to pass that you saw Mr. von Opel there? A. Mr. Hoffacker arranged for me to meet Mr. von Opel.

Q. Will you describe your meeting with Mr von Opel in Paris? A. Were staying at the Prince of Wales Hotel. Mr. von Opel came there and took us out to some very famous restaurant for dinner and then took us to a musical show called the Follies that night.

Q. Was that the Follies Bergere? A. I think so.

Q. What business discussion did you have with Mr. von Opel on this occasion? A. Well, there wasn't very much business discussed. I don't recall any specific business conversation.

Q. What did you discuss? A. Well, we discussed sport, I think, largely. Mr. von Opel told me some very interesting, diverting stories of his experiences as a balloon racer, motorboat racer, bicycle racer, and so forth. That general social conversation was the main occupation.

1745 Q. After the evening at the Follies Bergere did you see Mr. von Opel again during this trip to Europe? A. No.

Q. When did you see him next? A. I think it was the following year.

Q. 1935? A. Yes.

Q. And where did this meeting take place? A. It took place at my home, near Nashville.

Q. That is at Brentwood, Tennessee? A. Yes.

Q. Was anyone with Mr. von Opel? A. Mr. Hoffacker was.

Q. Did Mr. von Opel tell you where he had just been? A. Yes. Mr. Hoffacker had already wired me. He was enroute from Texas to New York.

Q. Do you remember how Mr. von Opel came from Texas to Nashville? A. I remember it very vividly, because—

Q. What is it that fixes it in your mind? A. Well, he was driving a Mercedes car. I didn't remember having seen a Mercedes before that—quite a brilliant-colored car—and it was fixed in my mind because Mr. von Opel told us of some very remarkable speed that he had made on the trip.

1746 Q. How long did Mr. von Opel stay with you in Brentwood? A. I am not sure whether he spent the night or did not. In any event, it was a very short time; not over a night.

Q. Did he visit the office of Spur in Nashville? A. I don't recall his visiting the office of Spur.

Q. At any rate, you did not have any particular business discussion with him? A. I had some discussion with him about something that might be related to business—was related to business. That was a hose nozzle—a gas hose nozzle.

Q. Will you state what the conversation was about a hose nozzle? A. Well, we were having a lot of difficulty in the gasoline business by gasoline overflowing when it was put in tanks, and there was a lot of gasoline lost on that account; and in the course of our conversation with Mr. von Opel, I found out that he was very active in an inventive capacity and had a considerable setup in Berlin, I believe, to develop different inventions; and I explained to him this problem; and he said that it would be an easy one to solve, and he liked the idea very much, and thought it would be good—and proved to have been after it became very popular four or five years later—and that he would work on it.

1747 Q. After this visit did you receive any message from him concerning the hose nozzle problem? A. Yes, I did.

Mr. Burling: Mark this the next defendant's exhibit number.

(Telegram was marked Defendant's Exhibit 110 for identification.)

By Mr. Burling:

Q I show you Defendant's Exhibit 110 and ask you if that is the telegram which you received from Fritz von Opel (handing a document to the witness). A. Yes, sir, it is.

Mr. Burling: I offer it in evidence.
Mr. Ingoldsby: No objection.
What is the number on that?
The Deputy Clerk: 110.

(Defendant's Exhibit 110 for identification was received in evidence.)

Mr. Burling: May I hand it to Your Honor?

By Mr. Burling:

Q. Now, Mr. Houghland, when did you next see Mr. Fritz von Opel, if you can recall? A. If I may refer to my notes on it.

Mr. Ingoldsby: What are the notes on? Maybe we can agree. Do you mind telling me what the notes are of?
1748 Mr. Burling: It is a chronology, I believe.
Mr. Ingoldsby: That is perfectly all right.

By Mr. Burling:

Q. Have you gone through your files at my request and made notes as to when various meetings took place? A. Yes, sir.

Q. When, according to your present best recollection, did you next see Fritz von Opel? A. I next saw him in Montreal, in Canada, in 1936.

Q. Can you fix the approximate date of this meeting in Montreal? A. I think it was immediately before the 15th of June.

Q. Where did you meet Mr. von Opel in Montreal? A. At the Windsor Hotel.

Q. And who else was present? A. Mr. Hoffacker.

Q. Was anyone else present? A. I believe there were some other people there, but I did not know them.

Q. What discussion did you have with Mr. von Opel at that time? A. I can't recall any specific discussion at that time. I recall some explanation of our meeting there.

Q. What did Mr. von Opel say to you about what he was doing in Montreal? A. Well, he said that a
1749 lawsuit had been filed against him in the United states and that he was in Montreal in order to escape service on this suit, and that is why they had asked me to come to Montreal.

Q. How long did you stay there? A. Part of a day and night.

Q. And then you went back to Nashville? A. Yes.

Q. Did you receive a letter from Mr. von Opel later in that year? A. Yes, I did.

Mr. Burling: Mark that, please.

(Letter dated April 14, 1936, was marked Defendant's Exhibit 111 for identification.)

By Mr. Burling:

Q. I show you Defendant's Exhibit 111 and ask you if that is the letter which you received from Fritz von Opel in 1936 (handing a document to the witness). A. Yes, it is

Q. Now, I address your attention to the last paragraph, the words:

"The reason I write you about this is 1. because I think it may be of some interest to you, 2. because I meditate about buying these patents for a German factory we control," and I ask you if Fritz von Opel ever told you what factory he had in mind or who the word antecedent of the pronoun "we" is? A. No, I don't recall any discussion on that.

1750

Mr. Burling: I offer 111 in evidence.

(Defendant's Exhibit 111 for identification was offered in evidence.)

By Mr. Burling:

Q. Did you see Fritz von Opel in the year 1936? A. Yes, I did.

Q. Where and at what time? A. He came again to Nashville and stayed at my house, and I think it was in December.

Q. What business discussion did you have at that time? A. I can't recall any specific discussion.

Q. In the year 1937 did you leave the United States? A. I did.

Q. Where did you go? A. I went to Europe.

Q. Was it a pleasure trip or business trip? A. Pleasure trip.

Q. You went with your wife? A. And family, yes.

Q. On that occasion did you receive any communication from Fritz von Opel? I will show you Defendant's Exhibit

59 and ask you if that is the cable which you re-
1751 ceived from Fritz von Opel (handing a document to the witness). A. Yes, that is.

Q. And you handed it to me at my request, is that correct? A. Yes.

Mr. Burling: Your Honor, this reads, addressed to Mason Houghland, American Express, London.

"Hope to arrange seeing you somewhere on your way back. Please mail me probable route you take. Regards. (Signed) Fritz von Opel, Kampen Sylt."

By Mr. Burling:

Q. I show you Defendant's Exhibit 60 and ask you if that is also a wire which you received from Fritz von Opel (handing a document to the witness). A. Yes, it is.

Mr. Burling: And that reads:

"Would your plans permit seeing me in or near Hamburg any date after August 25. Beaucoup de plaisir. Regards. Opel, Zurich. Dolder Hotel."

By Mr. Burling:

Q. I show you Defendant's Exhibit 61 and ask you if that is a letter which you received from Fritz von Opel (handing a document to the witness). A. Yes, it is.

Q. That also has to do with your meeting in
1752 Europe? A. Yes.

Q. And I show you Defendant's 62 and ask you if that is a wire which you received from him (handing a document to the witness). A. Yes, it is.

Mr. Burling: And this reads:

"Pleased meeting you morning September. Vierzehn Hotel, Vier Jahreszeiten, Hamburg. Frankenberg not present in Zurich. Regards, Opel."

By Mr. Burling:

Q. Had you met a man named Frankenberg at this time? A. I had not, sir.

Q. What did you understand by that when you received the message, "Frankenberg not present in Zurich"? A. Well, I understood that for some reason I was to meet Frankenberg. I can't recall the exact thing. This was an explanation that I could not see him in Switzerland, where I was going and did go.

Q. Did you meet Fritz von Opel in Hamburg in 1937? A. I did, yes, sir.

Q. Where? A. I met him at a hotel. I can't recall the name of the hotel.

Q. Did you have a discussion with him at that time? A. I did, yes.

1753 Q. Will you state what the discussion was? A. He discussed with me the synthetic tire and its development, which was something new in my knowledge, and he told me that he was interested in the development of synthetic tires.

Q. Did he say something further about it, or what the nature of his interest was? A. He did not tell me anything as to the nature of his interest, but he discussed it quite a lot, and I was interested in it, I mean as a subject, and he asked me if I thought synthetic tires could be sold in America and if we could sell them through the Spur filling stations.

Q. Did he take you anywhere in Hamburg? A. Yes. He took me to some automotive place which I judged to be a garage.

Q. Can you recall anything about where the place was? A. Yes. I can recall that it faced on a very small park; that's all. I could not recall any street.

Q. And what did he say to you about why he wanted you to go to this place? A. He wanted to show me synthetic tires that were being used.

Q. Were they mounted on a vehicle? A. Yes; they were mounted on a truck.

Q. What did you say to him about synthetic rub-
1754 ber tires? A. Well, I told him, in response to his inquiry as to whether or not they could be profitably sold in America—I told him that America was having a deluge of natural rubber tires, and they seemed to be below the cost of production. It wasn't very profitable for anybody; and I doubted, unless these could be sold at an astoundingly low figure and would be productive of unusual results, that it would be profitable.

Q. Did you have any further discussion with him about business? A. I am sure I must have, but I can't recall any particular discussion. I mean, there must have been some question as to how Spur was getting along, and so forth.

Q. Did you leave von Opel in Hamburg or did you go somewhere else with him? A. I left him in Hamburg.

Q. Did he tell you where he was going next? A. Yes; he was going from there on a trip through Berlin and Wiesbaden and Budapest.

Q. Now, coming to another subject, will you state whether or not you ever developed an idea relating to subsidiary corporations which should be formed by Spur? A. Yes, I did.

Q. Will you state what that idea was and when
1755 you developed it? A. Well, I developed the idea probably around the latter part of 1934 and put it into execution in 1935. The idea was to use a much simpler outlay, a much lower cost operation, with must simpler buildings and equipment, and go into small towns with the spur type of station, but on a different basis and with separate corporations, wholly owned corporations.

Q. Did Spur set up a wholly owned subsidiary? A. Yes.

Q. What is the name of that? A. Winn Oil Company.

Q. When was that set up? A. In 1935.

Q. Now, did you ever have a discussion with Fritz von Opel concerning the idea of setting up a series of small subsidiaries? A. Yes.

Q. When did that take place? A. It took place in October, 1937.

Q. Where? A. In New York.

Q. Now, will you state first where in New York in October, 1937, you first met Fritz von Opel? A. At the hotel where I was staying.

1756 Q. What is that hotel? A. Barclay.

Q. And Fritz von Opel came to your hotel, did he? A. Yes.

Q. Did you go anywhere then? A. Yes.

Q. With him? A. Yes.

Q. How? On foot, in a taxi, or how? A. On foot.

Q. While you were walking with Fritz von Opel did you have any discussion with him? A. Yes.

Q. Will you state what the discussion was? A. We discussed the results that we had gotten from the Winn Oil Corporation, and I discussed with him the possibility of our starting more companies of the kind. I hoped to start as many as ten companies, which would require a considerable amount of money. Since we had probably an investment in the original company that was small—it was only $25,000—a number of them would have cost a great deal, and I discussed that general situation with him.

1757 Q. Did he say anything to you as to where you were going in this walk? A. Yes. He had before we started.

Q. What did he say to you? A. He said that Dr. Frankenberg was in this country and that he wanted me to meet him and to present the proposal to Dr. Frankenberg, and at that time he told me very clearly who Dr. Frankenberg was.

Q. What did he say to you as to who Dr. Frankenberg was? A. He said that Dr. Frankenberg was his father's agent.

Q. Did he say anything to you as to why he wanted you to meet Frankenberg? A. Yes. He said that Dr. Frankenberg would have to pass on anything of this magnitude and that I would have to present it to Dr. Frankenberg.

Q. Where did you go? Where was the end of your walk? A. The Plaza Hotel.

Q. In New York? A. In New York, yes.

Q. When you got to the Plaza what did Fritz von Opel do? A. He called Dr. Frankenberg's room and asked Dr. Frankenberg to come down and meet us.

1758 Q. And did he do so? A. Yes.

Q. That was the first time you had met Dr. Frankenberg? A. Yes.

Q. Where did you go then? A. We went into a lounge in the front part of the hotel and sat there and talked.

Q. And what was the conversation between you and Frankenberg and von Opel? A. It largely consisted of my outlining the proposal I had in mind about the subsidiary companies and of interrogation on the part of Dr. Frankenberg as to this plan.

Q. And what did Dr. Frankenberg say about the plan? A. Dr. Frankenberg asked a number of very intelligent questions about it, went into it rather thoroughly, and finally reached the conclusion that he did not think it advisable to enter into it at this time.

Q. What did he say to you? Do you remember his words? A. I don't remember his exact words, no. He said, "I don't think it is advisable to undertake it at this time."

Q. And while you were with Frankenberg did Fritz von Opel say anything? A. I am sure he did, yes. The general conversation was an exposition of the plan by me and answering questions by Dr. Frankenberg.

1759 Q. In other words, he just sat by; you were interrogated by Frankenberg; is that correct? A. That is right.

Q. Did you leave alone or did you leave with Fritz von Opel? A. I left with Fritz von Opel.

Q. Again, did you go on foot or were you in a taxi? A. We walked.

Q. Did you have any conversation after you left the Plaza Hotel? A. I did.

Q. Will you state what that conversation was? A.

Well, he said he was sorry that Dr. Frankenberg did not approve the idea; that he himself did approve the idea and he thought it was a wise one, which, incidentally, it certainly turned out to be, but that Dr. Frankenberg was his father's financial representative; that there was nothing that could be done upon a decision of this sort after Dr. Frankenberg did not approve.

Q. Did he say as to whether he, Fritz von Opel, would set aside Frankenberg's opinion? A. There was no comment of that kind.

Q. When did you next see Fritz von Opel? A. When did I next see him? Let me refresh—It was the following year.

1760 Q. That is 1938? A. Yes.

Q. And where did the meeting take place? A. It took place in Nashville, at my house.

Q. Can you fix the approximate time—that is, the month? A. I am not too sure of it, but I think it was around October.

Q. How long did Fritz von Opel remain with you near Nashville on this occasion? A. On this occasion for several days.

Q. Was he working in the Spur offices during the day? A. No.

Q. He was just staying with you as a social visit; is that correct? A. That is right.

Q. Did you have any conversation concerning business or finances on this occasion? A. I am sure we must have had some. I am sure I must have answered some inquiries. There was no detailed conversation about finances.

Q. Did you have any conversation concerning the Opel Motor Works on this occasion? A. Yes. On this occasion he told me—the first time that I had heard the story—that is, from him—of the sale of the Opel Motor

1761 Works stock to General Motors.

Q. Did he say anything else about this topic? A. Yes; he said a good deal about it.

Q. Will you tell us what you can recall of that, please?

A. Well, I don't recall a great deal about it. I do recall the substance of the conversation. He told me briefly that he got into this question of taxes and of tax avoidance as related to both himself and to me.

Q. Did he say anything about the sale of the Opel Works in relation to taxes? A. Yes. He said that under the method of the sale, they had been able to avoid a great deal of tax.

Q. Did he say anything about how Uebersee Finanz-Korporation was held at this time? A. Yes. He told me that as part of the tax avoidance—he told me that they had sold the shares of Uebersee Finanz-Korporation to some Swiss nationals.

Q. Did he say why they had done this? A. Yes; he said to avoid some tax.

Q. Did he tell you who the Swiss nationals were? A. I asked him who the Swiss nationals were, and he laughed and said, I don't know them.

Q. Did he say anything about how the certificates of Uebersee were held at that time? A. He said that they were endorsed in blank and returned to the posses-
1762 sion of the Opels.

Q. Did he discuss with you any problem involving your own personal tax situation? A. Yes, he did.

Q. Will you state what that conversation was? A. Well, he pointed out to me that I was paying quite a lot higher income tax than he was as a foreigner and that I might have formed a foreign holding company and relieved myself of a lot of taxation, but that a recent regulation, or something of the sort, made that a more doubtful proposition, but that by taking Swiss citizenship and then using a holding company, I could have a much lower tax rate.

Q. What did you say to him about that? A. Well, I did not know whether he was in jest or in earnest, and I was flabbergasted about citizenship. I didn't know anything about it, so I guess that was just laughed off.

Q. Now, that was the fall of 1938.

Coming now to 1939, did you have any further communi-

cation in that year with Fritz von Opel? A. Yes, I did.

Q. Will you state what that was, please. A. Well, the communications that I recall were some wires, and I believe a letter, relating to my meeting him some place in Europe.

Q. Where were you at the time? A. In the United
1763 States.

Q. But you planned to go to Europe in the summer of 1939? A. I planned to go to England and that I might go to Europe.

Q. At any rate, you planned to cross the Atlantic? A. Yes.

Q. Now, I show you Defendant's Exhibit 63, and ask you if that is a wire which you sent to Fritz von Opel (handing a document to the witness). A. Yes, sir.

Mr. Burling: If Your Honor pleases, this reads, addressed to Opel, Chalet Kulm, St. Moritz, Switzerland:

"Coming abroad. When can I meet you for one or two days, preferably during first half of August?

(Signed) Houghland."

By Mr. Burling:

Q. I show you Defendant's Exhibit 64 and ask you if that is a reply which you received from Opel (handing a document to the witness). A. Yes, sir.

Mr. Burling: And that reads:

"Would meet you any time Hamburg, but would like both of you to come to our estate near Cologne after August 18. Regards, Opel. Kampen Sylt."

1764 By Mr. Burling:

Q. I show you Defendant's Exhibit 65 and ask you if that is a wire which you sent to Fritz von Opel (handing a document to the witness). A. Yes, sir.

Mr. Burling: This reads:

"Opel, Kampen Sylt. Delighted to accept invitation. Suggest about August 25 if convenient to you. Address American Express, London."

By Mr. Burling:

Q. Now, did you come to London in the month of August, 1939? A. Yes, sir.

Q. Where were you staying? A. At the Carlton Hotel.

Q. Will you state whether or not you received any message from Fritz von Opel? A. Yes, I did.

Q. How was that? A. I received a telephone call from him.

Q. Where did he say he was? A. The call was from or through Cologne.

Q. Through Cologne? A. Cologne is the name I got.

Q. And were you in London? A. Yes, sir

1765 Q. Will you state what the conversation was?

A. Well, he was renewing his invitation for Mrs. Hougland and myself to come to their estate in Germany and visit.

Q. Will you state what you said and what he said on the telephone on this occasion? A. Well, England was under great tensity at the time and war looked imminent, and I was very much alarmed, and I told him that I was and that I felt there was going to be a war and that I did not think it was advisable for me to come.

Q. What did he say in reply to that? A. And he said, "There isn't going to be much of a war. The English won't fight. All we are going to do is take off a little slice of Poland."

Q. You did not understand that Liechtenstein was going to declare war on Poland, did you? A. No, sir.

Q. Did he say anything else on this occasion? A. He continued to urge me to come into Germany.

Q. What did you say to him as a result? What was the outcome of this particular conversation? A. I told him

that I did not feel that it would be safe to make the trip, but that I would call him back the next day.

1766 Q. And did you call him the next day? A. Yes, sir.

Q. Will you state what the conversation was on this occasion? A. Well, upon the next day I told him that I definitely made up my mind that it would not be wise to make the trip.

And he said to me, "Well, I think you are wrong. I think you ought to make the trip. I would like very much for you to meet my father, and for my father to meet you." He said, "After all, you work for my father and it is rather important that you know him."

And I said that, "I appreciate that and would like very much to meet him," but I was afraid to cross the channel.

Q. And did you cross the channel? A. No, sir.

Q. What did you do? A. I scurried around and got me a boat home within a day or two and came to America.

Q. Do you remember the name of the boat? A. Yes, sir, The Normandie.

Q. That was the last time The Normandie crossed the Atlantic; is that right? A. Yes, sir.

Q. Do you remember the date? A. I could not fix the date absolutely, except that it was the latter part of August, and I remember that after we got home it was

1767 only a day or two before war was declared.

Q. When did you next hear form Fritz von Opel? A. I think it was in September of that year.

Q. I show you Defendant's Exhibit 105 and ask you if that is a wire which you received from him (handing a document to the witness)? A. Yes, sir, that is.

Mr. Burling: Your Honor, this is a cable reading:

"Mason Houghland, care of Spur Distributing Company. Overseas investors intend selling participation to meet other obligations what I personally deeply regret. Please communicate Ulrich, Shreveport, who is informed ac-

cordingly. Intend to sail soon. Regards, Fritz. Doldegrand, Zurich."

By Mr. Burling:

Q. Did you take any action after you received this wire? A. Yes, sir. A few days thereafter, two or three days thereafter, I sent cables to Adler and Company, Dr. Frankenberg and Mr. Gaeng, and to Uebersee, calling to their attention the contract I had which gave me a call on the stock.

Q. And I show you now Defendant's Exhibit 112 and ask you if that is a copy of the wire which you sent (handing a document to the witness). A. Yes, sir.

1768 Mr. Burling: I offer it in evidence.

(Defendant's Exhibit 112 for identification was offered in evidence.)

By Mr. Burling:

Q. Did you also make any telephone call in connection with this message in September, 1939? A. Yes, sir.

Q. To whom did you call and where was the call placed? A. I called Fritz von Opel in Zurich, Switzerland.

Q. From where? A. From Nashville.

Q. Have you ever before or since made a transatlantic telephone call? A. No, sir.

Q. So it is clearly fixed in your mind; is that right? A. Yes, sir.

Q. Will you state what the conversation was on the telephone? A. I told Fritz that I was greatly surprised that they were going to sell the Spur stock, that I thought that he regarded it very highly and that its future was bright, and he told me that he did so regard it highly, but that his father had determined to have the stock sold and had issued orders to Dr. Frankenberg to sell it, and although it was greatly against his wishes, there was nothing he

1769 could do about it.

Q. That is, he, Fritz? A. That is right.

Q. Did you have any further talk with him on the phone? A. Yes, sir. I asked him to see if he could get me an option on the stock for a reasonable price and for a reasonable length of time which might enable me to attempt to place the stock in hands that would be friendly to me.

Q. And what did he say he would do about that request? A. He said that he would try very urgently to do it and would promptly communicate with me.

Q. Did he say he would talk with anybody about your request? A. Yes.

Q. With whom? A. He said he would talk with Dr. Frankenberg and he would talk to his father.

Q. And did you receive a message thereafter from Fritz von Opel regarding this offer? A. No. I received a communication through Mr. Ulrich from him.

Q. What was the substance of that? A. The substance was that they could not arrange the option?

Q. Now, did the Opels ever sell the Spur stock?

1770 A. No, sir.

Q. Were you advised as to why they changed their minds? A. No, sir.

Q. Now, when did you next see Fritz von Opel in person? A. In the following year, 1940.

Q. What season of the year, if you recall? A. Early summer.

Q. And where was it? A. At my house.

Q. At Brentwood? A. Yes, sir.

Q. How long did von Opel stay with you on this occasion? A. He stayed several days.

Q. Did you have any discussions with him at this time? A. Yes, sir; a number of them.

Q. Did you have any discussion with him when your son, Calvin Houghland, was present? A. Only part of one.

Q. Were you present here when Calvin Hougland testified? A. Yes, sir.

Q. Do you recall the conversation which he testified to which he said took place in your upstairs sitting room?

A. I recall the commencement of it. I was very tired
1771 and, as I recall it, went to sleep.

Q. Now, will you state what you can recall of your discussions with Fritz von Opel in the spring of 1940 at Brentwood, Tennessee? A. Yes. I recall very vividly his quite thrilling experience—the recital of his thrilling experience in being captured by the British at Gibraltar.

Q. Will you state what he said about that experience? A. Well, he said that the British took him off this ship and put him in a prison cell in the fortress at Gibraltar and that it looked like it was going to be a very difficult time for him, but that he succeeded in fooling them about his Liechtensteinean passport; and I remember very clearly he said, "You know how stupid the British are," and he said, "I made an acquaintance with a young English guard officer who liked to play chess, and we played chess every evening, and I finally convinced him that I should be released, that I was a fugitive from the Nazi system, and anti-German, and that the English did release me."

Q. Did he say anything about a passport? A. Yes, sir. I just mentioned that. He said that he fooled the English with the Liechtensteinean passport.

Q. Did he say how he had acquired this passport? A. Yes, sir.

Q. What did he say about that? A. He said that
1772 he bought it for the equivalent of ten thousand American dollars.

Q. During the course of this visit did you have any particular discussion concerning the Spur business? A. I am sure that he asked he how the Spur was doing, but I don't recall any—there was no detailed examination of anything about that.

Q. He did not give you any orders? A. No, sir.

Q. Now, later on in the summer of 1940 did you see him again anywhere? A. Yes, sir.

Q. Where was that? A. I saw him on Nantucket Island, where he was in residence at the time.

Q. How did you happen to be there? A. Our daughter was visiting a schoolmate on Martha's Vineyard, and her mother and I went up to Martha's Vineyard for a few days, and Fritz had written me a postal card telling me he was on Nantucket, asking me to come over, and I went over and paid a social visit to him on Nantucket.

Q. Did you have any business discussion with him on this occasion? A. I am sure there must have been some inquiry, but there was no serious business discussion.

1773 Q. He did not give any orders concerning Spur at this time? A. No, sir.

Q. Now, did you thereafter see him anywhere? A. Yes. I think that it was along about the month of December that he and his wife came to our house and visited.

Q. This is December 1940? A. Yes.

Q. Did you have any business discussion with him at this time? A. I can't recall any.

Q. When did you see him for the last time before you saw him here in court? A. I think it was in New York in probably July or August in 1941.

Q. Now, before that did you see him in Georgia? A. Yes, sir; I saw him in Savannah, Georgia.

Q. I show you Defendant's Exhibit 106 and ask you if this is a copy of a letter which you wrote to Fritz von Opel (handing a document to the witness). A. Yes, sir.

Q. I show you Defendant's Exhibit 107 and ask you if that is a note which you received from Fritz von Opel in Savannah, Georgia (handing a document to the witness).

A. Yes, sir.

1774 Q. Now, did you have a conversation with Fritz von Opel in Savannah? A. Yes, sir.

Q. That is the De Soto Hotel; is that correct? A. Yes, sir.

Q. Will you state what the conversation was? A. I endeavored to persuade Fritz to sell his Spur stock, because I felt that if we did go to war with Germany, which might happen, that it would be very detrimental to the Spur

Company to have a German ownership, and I endeavored to convince Fritz that the thing to do was to sell or cause to be sold this Uebersee's stock.

Q. Can you remember any more about what you said about that topic? A. I mean Spur stock held by Uebersee.

Q. Yes. A. Yes. I told him that after the last war—or during the last war—that a great many German holdings in America were seized and confiscated, and that if we went to war this one would be, doubtless, and it certainly seemed to me to be wise to sell it, and he explained to me in great detail how he had safeguarded the stock.

Q. And what did he say about that? A. He said, "We Germans and my father and I have all thought this out, of American holdings," and he said if, in the unlikely
1775 event that America should go to war, these holdings would be found in the hands of Swiss nationals.

And I said, "Well, Fritz, it is perfectly possible that Switzerland might get involved in the war."

And he said, "It is improbable, but if it should come to happen, they will be found in the holdings of a holding company in a neutral Latin-American country."

Q. Did he mention the Sociedad Commercial Montefranco? A. No, sir.

Q. He did not specify what Latin-American holding company he was talking about? A. No, sir.

Q. Did you refer to the fact that in 1939 it had been proposed to sell the Spur shares held by Uebersee? A. I did. I recalled at the time that his father had wanted to see the stock in 1939 and that he might be very receptive to the idea of selling it now; and he said that his father would not be, that he was sure his father thought very highly of it.

Q. In other words, Fritz von Opel did not listen to your advice about what would happen to the Spur shares; is that correct? A. That is right.

Q. And it turned out that your advice was correct;
1776 is that right? A. In that case.

Q. Did you have any discussion with him in the

De Soto Hotel in Savannah? A. I am sure I did, but I don't recall any specific discussion.

Q. Perhaps I can refresh your recollection. Did he say anything to you about a yacht? A. Yes, sir. He told me that he had either bought or had contracted for a yacht.

Q. Did you have any discussion with him at that time about the yacht? A. Yes. He showed me a lot of maritime maps of the coast, and I said, "Fritz, you ought not to carry those around, because, after all, you are a German, and if we should get in war and you are in possession of a lot of coast maps, it might embarrass you."

Q. When you said to Fritz von Opel, "After all, you are a German," what did he say to you? A. He did not say anything; he just laughed.

Q. He did not say, "No. I am not a German. I am a Liechtensteinean," did he? A. No, sir.

Q. By the way, did you ever have occasion to tell any representative of the United States Government
1777 about this incident? A. Yes, sir.

Q. When did that take place and under what circumstances? A. It took place when I was being interrogated by F. B. I. agents at my home in Nashville.

Q. Now, will you state how you came to be talking to an F. B. I. agent? A. Yes, sir. I can state that—

Mr. Ingoldsby: Will you fix the time of that, please?

By Mr. Burling:

Q. Will you fix the time and then describe the circumstances of how you happened to be talking to an F. B. I. agent? A. Well, I can't fix the time with accuracy, but my memory of it is that it was in January, 1942.

Q. Will you state where the interview took place and under what circumstances, and particularly fix the time of day, please? A. It was at night, about, perhaps, 10, 10:30 at night, at my home in the country near Brentwood, and the bell rang, and there were knocks on the door,

and I had gone to bed, and I went down and opened the door, and two strange men were standing at the door. We lived quite far in the country and about a mile back from the road, and I did not know what was afoot, but I admitted them, and they came in and sat down in
1778 the library and commenced to ask me questions; and I didn't know what it was all about, and I declined to answer their questions, and then they showed me their badges, that they were agents of the F. B. I.

Q. And then you told them of your acquaintance with Fritz von Opel: is that correct? A. I answered as truthfully as I could every question that they asked me; yes, sir.

Q. And they were questioning you about von Opel; is that right? A. Yes, sir; and about my German ownership of Spur Company and any other German that might be connected with it.

Q. Had you previously requested these gentlemen to call upon you? A. No, sir.

Q. Did they think you were a United States citizen at that time? A. No, sir; they suspected me of being a German.

Q. But you were not? A. No, sir.

Q. Did you ever discuss with Fritz von Opel the question of nobility or title? A. No. On one occasion when I was at Nantucket the Boston papers were carrying great columns of publicity about the Baron Fritz von Opel,
1779 and he mentioned on that occasion that his lawyer, Mr. Isadore Kressel had suggested to him that he leave the title off in the United States.

Mr. Burling: You may inquire, Mr. Ingoldsby.

The Court: I suppose you cannot complete this in the next three or four minutes?

Mr. Burling: I said I was through, Your Honor.

The Court: Yes. I was speaking to them.

2 o'clock.

(At 12:21 p. m. a recess was taken until 2 p. m.)

1780 AFTERNOON SESSION

(The trial was resumed at 2 p. m., upon the expiration of the recess.)

Thereupon—

JOHN MASON HOUGHLAND resumed the stand and, having been previously duly sworn, testified further as follows:

Cross Examination

By Mr. Ingoldsby:

Q. Mr. Houghland, I wanted to ask you, first, to again state the first time that you ever met Mr. von Opel. A. The first time I ever met Mr. von Opel was in Paris, in 1934.

Q. You are quite certain of that? A. Yes.

Q. How do you establish that date in your recollection? A. It was the first time I ever met him.

Q. The second time that you ever met him was in 1935 in Nashville, Tennessee; is that correct? A. Yes, sir.

Q. Was that the occasion when Mr. von Opel came there in his Mercedes car? A. Yes.

Q. Let me see if I can refresh your recollection on that. You saw that car, a yellow Mercedes, with red
1781 leather upholstery? A. It had red leather upholstery, yes, sir.

Q. Do you recall at the time you had that meeting with Mr. von Opel that he told you about participating in the Gordon Bennett balloon races in Chicago as a co-pilot? A. No, sir, I do not.

Q. You don't recall that? A. No.

Q. Do you recall whether or not anyone was with him when he arrived in Nashville in that Mercedes car? A. Yes; Mr. Theodore Hoffacker.

Q. Would it refresh your recollection any if I told you that Mr. von Opel came from Europe in the summer of

1933, that he spent about 14 days in New York, and went to Chicago, where he participated in the Gordon Bennett balloon races, and that at that time he brought with him his Mercedes car; and that he then went to Miami, Florida, and then went to Shreveport, Louisiana, where he contacted Mr. Hoffacker, and that he then went to Nashville, Tennessee, and met you? A. No, that would not refresh my recollection; my recollection is as I stated.

Q. You are quite certain it was the summer of 1935? A. Yes, sir.

Q. There wasn't any other occasion than the one to which you have testified when Mr. von Opel came to visit
1782 you in the Mercedes car; is that correct? A. I don't know whether it is correct or not. That is the first time I recall.

Q. Wouldn't you remember if he came to visit you in a yellow Mercedes? A. I don't know whether it was yellow or not.

Q. Did he ever again at any time, to the best of your recollection, come to visit you in a Mercedes car? A. I don't recall; he may have done so.

Q. If the customs office shows that that car was brought here in 1933 and returned to Europe the same summer or sold in the United States, would you then agree that you were in error as to the first time you met Mr. von Opel? A. No.

Q. You would not agree, then? A. No.

Q. All right. Mr. Houghland, I want to ask you to think carefully before you answer this question. Take as much time as you want. But will you give me the names of all the individuals in Washington with whom you have discussed this case or with whom you have discussed the acquisition of the stock of the Spur Distributing Company? A. I couldn't do that.

Q. Give me whatever names you remember. A. Well, I discussed the acquisition of the stock with Mr. Leo
1783 Crowley, Alien Property Custodian; with a number of his assistants in the Alien Property office, includ-

ing Mr. Rubens; Mr. W. D. Bradford—he was not his assistant; he was Mr. Markham's assistant—with Senator McKellar; with Mr. Cordell Hull; with Mr. De Orsey. That is all I can recall.

Q. That is all you recall offhand? A. Offhand recall. I am sure there were many over in the Alien Property Custodian's office, but I don't offhand just recall them by name.

Q. How many times have you discussed the acquisition of the Spur stock with Senator McKellar? A. Twice.

Q. Will you tell the Court the nature of those discussions and when they were? A. I think that they were in the—I know that one of them was in 1944.

Q. Will you give us the approximate date in 1944? A. I don't recall the approximate date. They may have both been in 1944. It is possible that one of them was in 1943, but I wouldn't attempt to state.

Q. Will you tell us what those conversations were about? A. Yes, sir. I was attempting to get— You are talking about Senator McKellar, now?

1784 Q. Yes. A. I was attempting to get Senator McKellar to intercede in my behalf to get the Alien Property Custodian to sell the stock.

Q. Both of those discussions were about that? A. Yes, sir.

Q. What, if anything, did Senator McKellar do about that? A. He called Mr. Markham, Alien Property Custodian, on the telephone and talked to him.

Q. Did you employ Mr. De Orsey? A. Yes, sir.

Q. He is an attorney in Washington? A. Yes, sir.

Q. What was the purpose of his employment? A. The purpose of his employment was to keep me advised of what was going on in Washington. My own attorney was ill with a heart attack, and I had no legal representative of any kind.

Q. Was part of Mr. De Orsey's employment to call upon Mr. Connor? A. No, sir.

Q. It was not? A. No, sir.

Q. Did you know he had called upon Mr. Connor?
1785 A. Yes, sir.

Q. He advised you of that fact? A. Yes, sir.

Q. That was in connection with your acquisition of the Spur stock? A. No, sir.

Q. It was not? A. No, sir.

Q. In what regard was it? A. I don't recall what it was; something to do with this impending trial, I think. I did not authorize Mr. De Orsey to call upon Mr. Connor, if that is the question.

Q. Those are the only people you recall, offhand, speaking to in Washington; is that correct? A. Yes, sir.

Q. Will you state at this time to the Court the financial interest which you have in the outcome of this case? A. Well, that would be a very difficult thing to state, but I can state the direct financial interest I would have.

Q. State that in any way you want. A. All right. I am employed by the Spur Company as its president and general manager and have a salary of $18,000 a year from that source. I do not now actually have profit participation, but I have had in the past, and I am sure, if Mr.
von Opel were to win this case, that I would no
1786 longer be employed in that capacity.

Q. Do you have any other interest in the outcome of the case? A. I am a stockholder in the company, and I— Do you wish me to express my opinion about the stock?

Q. I would like you to express how much stock you own. A. I own 28,000 shares.

Q. Percentagewise, what percentage is that of the total shares of the company? A. I can ask you to figure it, if you don't mind. There are 139,000 shares outstanding.

Q. You own 28,000 of that. About 12 per cent, roughly. Now, will you state to the Court whether you have appeared here voluntarily as a witness for the Government or whether you have been subpoenaed? A. I appeared voluntarily.

Q. Are you acquainted with Mr. H. D. Hines? A. Yes, sir.

Q. Will you state to the Court, please, who he is? A. Mr. H. D. Hines is vice president of Spur Distributing Company.

Q. Is he related to you? A. We married sisters.

Q. How long has Mr. Hines been with the Spur Company? A. Since the Spur Company was four months old.

1787 Q. Is he also a stockholder? A. Yes, sir.

Q. Do you know the extent of his participation? A. Not accurately, but generally speaking.

Q. Approximately what is it? A. About 7,000 shares, I think. I may be wrong in that; maybe a little more than that.

Q. Are you familiar with the compensation which Mr. Hines receives? A. Yes, sir.

Q. Will you tell the Court, please, what that is? A. Twelve thousand dollars a year.

Q. Does he have a bonus arrangement, or did he have a bonus arrangement, prior to the time the Custodian seized this property? A. No, sir.

Q. So all he ever received was the $12,000? A. Except that bonuses to employees, other than to myself, he has been included in.

Q. Did you forbid Mr. Hines' appearance here? A. No, sir.

Q. Did you discuss with him his appearance? A. Yes, sir.

Q. Will you tell us the nature of that discussion,
1788 please? A. Well, it was very brief. I told him to go down and see the lawyer, consult with him, and have him advise him on the matter; that I didn't know.

Q. You didn't know what? A. I didn't know whether he should appear or should not appear—what the circumstances were. As far as the subpoena was concerned, I assumed he had to appear.

Q. You told him to go and see what lawyers? A. To see—

Mr. Burling: May the record show, if the Court please, that the subpoena under discussion was a totally void subpoena?

Mr. Ingoldsby: We make no point of that.

Mr. Burling: We said it was totally void and that a simple reading of the Rules of Civil Procedure would have told you so.

Mr. Ingoldsby: We knew that when it was sent.

Mr. Burling: Thank you.

By Mr. Ingoldsby:

Q. Is that all the conversation you had with Mr. Hines about his appearance here? A. No. He came back from the lawyer's office and told me that he was not required to appear, that the lawyers said there was a rule that a witness living 100 miles from the District of Columbia
1789 could have his deposition taken instead of appearing.

Q. What did you do? A. I don't recall what I said; I probably said, "That's fine."

Q. So you didn't tell him not to come? A. No, I didn't tell him not to come at all.

Q. Did you have any conversations with any representatives of the Government concerning this subpoena? A. No, sir.

Q. You did not? A. No, sir.

Q. Mr. Houghland, you were one of the founders of the Spur Company, were you not? A. I was the founder, yes, sir.

Q. Who else was with you in that business at the time that the company was founded? A. Very early in it there was a man by the name of Joseph E. Thomas.

Q. Anyone else? A. No, sir.

Q. Were there just the two of you? A. Yes, sir.

Q. How much capital was invested in this business originally? A. At the very beginning, $15,000.

1790 Q. How much was invested in the company at the time that Mr. von Opel first became a stockholder?

A. I can't be absolutely sure of that without checking it, but I will be glad to tell you, approximately, what I think.

Q. Approximately. A. I think it was probably three hundred or three hundred fifty thousand dollars.

Q. How much stock did you own in this company at the time Mr. von Opel purchased into the company? A. I don't recall.

Q. Can you recall approximately? A. No, I don't believe I can.

Q. Didn't you own in the neighborhood of fourteen to sixteen thousand shares in 1931? A. I can't honestly answer that question, but that would be a fair kind of guess, if I were guessing at it.

Q. That would be a fair estimate, you think? A. Yes, I think so.

Q. Were those shares paid for in 1931? A. No, sir.

Q. What was the arrangement between you and the company with respect to those shares? A. I owed $30,000 on the shares, and I had a time period to pay them off in.

1791 Q. What collateral was given for the payment? A. The shares.

Q. The shares were pledged with the company; is that correct? A. Yes, that is correct.

Q. Did Mr. von Opel disturb this arrangement when he came with the company? A. No, sir.

Q. Over the period of years, did you ultimately pay off those shares? A. Yes, sir.

Q. In addition, you acquired some few thousand additional shares; is that correct; since 1931 or 1932? A. Yes, quite a few.

Q. I believe you testified on direct examination that you received an employment contract when Mr. von Opel purchased into this company; is that correct? A. Yes, sir.

Q. Will you explain briefly how you happened to obtain that contract and what the contract was all about? A.

Well, there was a rather unhappy period of adjustment between Mr. Hoffacker and myself, and we carried on negotiations for almost a year, in which I, in order to protect myself from being badly handled, I thought, was working to try to raise money to exercise my options
1792 and return—that is, with my group—to the controlling position in the company.

Q. Then what happened? A. In the course of those negotiations, why, we compromised on my having an employment contract and a call on their stock in case they sold.

Q. That was a contract for how long a period of time? A. It was for eight years but retroactive through 1933, so it was really, I think, only seven years ahead of that date.

Q. Did that contract contain any provision regarding your engaging in any business in competition with Spur? A. Yes, sir.

Q. What did it say about that? A. It said that I would not engage in any business or in competition with Spur.

Q. Would you say that you resented Mr. von Opel's purchase into the Spur Company? A. Yes, sir.

Q. In 1932? A. I resented the purchase. I didn't know Mr. von Opel, but I resented the purchase and the method of it.

Q. Would you say that you have ever gotten over that resentment? A. No, I don't think I have.

1793 Q. What income were you receiving from Spur just prior to the time you entered into this contract? A. Eighteen thousand dollars, the same that I receive now.

Q. Under the seven-year contract which you had with Mr. von Opel, did you receive merely $18,000 under that contract? A. I received this payment for waiving the right to exercise my options on additional stock. I received a management contract with a profit participation in it.

Q. What was the extent of your participation in profits under this contract? A. It was 5 per cent of net earnings after 12-1/2 per cent had been earned for stockholders on capital and surplus.

Q. What is the largest amount that you ever received in any one year under this contract? A. Thirty-eight thousand dollars.

Q. When did that contract terminate? A. January 1.

Q. Of what year? A. This year—of 1949—or December 31, 1948; I don't recall which.

Q. Didn't you receive two contracts? A. Yes. I just told you I did.

Q. When you said that the largest amount you
1794 ever received under the contract was— A. Was under the management contract, which I understood you to ask me about.

Q. My question is, Was there one management contract or two management contracts? A. There was one management contract.

Q. And that ran from 1933 to when? A. To January 1, 1949. That was a renewal in 1940.

Q. Then, that same contract was renewed? A. Yes.

Q. That only operated for how long—two years?—before the Government took over? A. Well, it was renewed in 1940, and the Government took over in 1942. Yes; two years approximately.

Q. Did they discontinue the contract? A. No, sir.

Q. You are still entitled to participate in profits if earned, then? A. I was paid until termination of the contract.

Q. I believe that your son testified the other day that he was the owner of the Direct Oil Company; is that correct? A. Yes, sir.

Q. Are you able to tell us, please, who was the owner of the Economy Oil Company? A. I am not absolutely sure, but I think the Economy Oil Company—I am
1795 not absolutely sure about the name, but I imagine I know what you are inquiring about—I think the

Economy Oil Company was a group of four or five small stations owned by Mr. Henry Hines after—

Q. That is the same Henry Hines who was with your company? A. That is right.

Q. Is that company still in business? A. I believe it has one filling station at Russellville, Kentucky.

Q. That is all they operate at the present time? A. Yes.

Q. How many stations does your son operate? A. I believe he operates fifteen.

Q. They are located in five southern states; is that correct? A. I believe it is.

Q. The last year that the company operated prior to the time when the Custodian took over the interest of Mr. von Opel was 1941; is that correct?

Mr. Burling: Will you state what company you are talking about?

By Mr. Ingoldsby:

Q. I should clarify that. The Spur Company. A. Yes; they took it over in 1942.

1796 Q. So the last year of operation was 1941; is that correct? That was the last year of operation prior to the time the Government took over? A. I believe it was, yes.

Q. Will you tell the Court what Spur earned in that year? A. In 1941?

Q. In 1941. A. As I recall—I couldn't tell you exactly, but I can tell you very closely—I think it earned approximately four hundred seventy some thousand dollars net.

Q. That is how much per share? A. I think it is close to $3.50.

Q. Will you describe for the Court what the capital stock, what the capital structure of the company was at the time the Custodian took over the interests of Mr. von Opel? A. It had 400,000 shares of stock, of which 139,000 were issued.

Q. That is the entire structure? A. Yes, sir.

Q. Will you describe also the arrangement on the board of directors of the Spur Company at that time? A. In 1941?

Q. Yes. A. You mean after the Government took over or before?

1797 Q. Immediately before—on January 1, 1942, say.

A. I couldn't be quite sure of the date about it, but if you will ask the question perhaps a little differently I could give you the information you want. I mean I couldn't be quite sure as to who were on the directorate in 1941 and who were changed on the directorate in 1942.

Q. Well, go ahead and give the explanation you want to give. A. But I know who were on the directorate definitely in April, 1942, and I believe that is the information you may want.

Q. Well, who was there in April, 1942? A. Well, in April, 1942, there was myself, Mr. Henry Hines, Mr. Cecil Sims, Mr. Paul M. Davis, and I believe Mr. W. D. Bradford representing the Government. I won't trust that to be accurate.

Q. That is April, 1942? A. I imagine that is it; I couldn't be absolutely sure.

Q. Are you quite certain that Mr. Bradford was on the board of directors at that time? A. No, I am not. I am not that certain.

Q. You don't have any independent recollection of when he came to your board of directors? A. I can't right certain about it. I don't believe he was. I believe somebody else was, but I couldn't recall. Somebody from the

1798 Alien Property Custodian's office.

Q. Do you recall when Fritz von Opel was interned? A. No, I can't recall.

Q. Would it refresh your recollection if I told you that it was February, 1942? A. No, I just don't know when he was interned.

Q. Do you recall that it was in the early part of 1942? A. No, I don't. I recall that he was interned some time in that general period after war was declared, but I can't recall the date. I don't know that I ever knew it.

Q. Would you say that it was a matter of no interest? A. No, it was a matter of interest to me.

Q. I beg your pardon? A. I say no, it was a matter of interest to me.

Q. But you never found out or made any particular effort to find out when he was interned? A. The date, no.

Q. Is it a fact that prior to Mr. von Opel's internment your board of directors was composed of yourself and Mr. von Opel and a man named Ulrich and Mr. Thomas? A. Yes, that is right.

Q. How long did that situation exist? A. Mr. Ulrich was removed when the Custodian took over.

Q. My question is this: How long prior to January 1, 1942 had that situation been in existence? A. That 1799 board of directors?

Q. Yes. A. I can't recall. I don't recall Mr. von Opel ever having been on the board of directors prior to that time. I remember he was on the board of directors at one time, but I don't recall his ever having been prior to that time.

Q. Well, you know that Mr. von Opel could not have been on the board of directors after January 1, 1942? A. That is right. Before the time, you mean? I don't recall his having been a director but one time. I don't, frankly, know just what the time was.

Q. Would you say that Mr. von Opel was not a member of the board of directors in 1941? A. I wouldn't say, because I just don't recall. The directors had a lot of shifts and changes in them through the years. I don't recall.

Q. During the period from, say, 1938 through 1941 you had only four members of the board, didn't you? A. I don't recall, now. We were supposed to have five, I think.

Q. Didn't you pass a resolution some time in 1936 which authorized five members, but by agreement there were only four members: you and Mr. Thomas, who was, let us say, friendly to you, and Mr. von Opel and Mr. Ulrich, who was friendly to Mr. von Opel? A. I don't recall
1800 that.

Q. You don't recall that? A. No.

Q. Would you say that that was not the case? A. No, I would not.

Mr. Ingoldsby: What is our next number, Mr. Clerk?

The Deputy Clerk: Number 163 coming up.

Mr. Ingoldsby: Will you mark this as 163 and this letter as 164?

(Letter of October 25, 1943, from Spur Distributing Company to Alien Property Custodian, was marked as Plaintiff's Exhibit 163 for identification.)

(Copy of letter of May 31, 1943, from S. J. Crowley to J. Mason Houghland, was marked as Plaintiff's Exhibit 164 for identification.)

Mr. Ingoldsby: Plaintiff's Exhibits 163 and 164, I wish to state for the record, come from the Department of Justice files and were provided us by the Department. I might say that the same thing applies to all other documents which I shall offer until further notice.

I offer Plaintiff's Exhibits 163 and 164.

Mr. Burling: May I see them? I do not doubt you, but I just have not seen them.

(Mr. Ingoldsby handed papers to Mr. Burling.)

By Mr. Ingoldsby:

1801 Q. Mr. Houghland, before I show you these two exhibits, I want to ask you, What was the financial

condition of Spur in the year 1943? Will you describe it briefly? A. I would like you to explain that question a little to me.

Q. All right. Were you making money, or were you losing money? A. 1943?

Q. Yes. A. I don't recall the net return of 1943, but I do recall that gasoline controls set in in 1942. We were limited, first, to a 72-hour week, and the controls of amount sold then set in and were in existence at that time, so I would think, offhand, that our situation was badly worsened.

Q. Do you have any definite and independent recollection of whether or not the company made or lost money in the year 1943? A. No, I don't.

Q. You don't know? A. No.

Q. Do you recall whether the company made or lost money in the year 1944? A. Yes, it lost money, I think, in 1944.

Q. Do you recall whether you made or lost money
1802 in the year 1945? A. No, I don't recall.

Q. You do definitely recall, though, that the company in 1941 made better than $400,000 net? A. Yes.

Q. You do recall that? A. Yes.

Q. Mr. Houghland, do you recall that all during the war years, 1942, 1943, 1944, and 1945, the company lost money? A. Well, I recall that we were in a lot of trouble and lost money in some of those years, but I can't recall which years it was.

Q. Do you recall if you lost money every year? A. Well, I know it was very tough. I think—I don't recall just exactly the financial detail of it.

Q. Is it your testimony at the present time that you don't recall whether the company made money in the years 1942, 1943, 1944, and 1945? A. No; I don't recall just exactly how the financial sheet turned out in those years. I don't remember. It was very tough.

Q. What do you mean by saying, "it was very tough"? A. Well, I mean we were under great restrictions on gasoline sales.

Q. Did you pay any dividends during those years? A. I don't believe we did in 1943, 1944, or 1945. I don't
1803 believe we did. In 1942 we may have paid a dividend—I am sure we did—on 1941 business.

Q. In 1942 you paid a dividend based on 1941 business? A. Yes.

Q. But you don't recall whether you paid a dividend in 1943 based upon 1942 business? A. No, I don't.

Q. Do you recall whether or not you received any bonus under your management contract in the years 1942, 1943, 1944, or 1945? A. I received one in 1942 for 1941 business. I recall that.

Q. That is the last one you received until after the war, isn't it? A. I don't know.

Q. Don't recall? A. I don't recall.

Q. Do you have any income from your company—that is, the Spur Company—other than your salary and your dividends? A. What do you mean: "income other than".

Q. Do you receive anything else from Spur? A. I receive rental on property in Cincinnati, Ohio.

Q. I am not asking about your other income; I am asking about your other income from Spur; and by "other income" I mean income other than your salary or your bonus
1804 arrangement. A. I receive a rental check on the property at Cincinnati, Ohio, from Spur.

Q. That is something which you personally own in Cincinnati? A. That is right.

Q. How much do you receive for that? A. Ninety-nine dollars, I think it is, a month.

Q. That is the only income which you receive from Spur— A. Other than this I have described.

Q. Other than this which you have described? A. Yes.

Q. Yet it is your testimony that you do not recall whether

or not you received any bonus under your management contract because of profits during the years 1942, 1943, 1944, or 1945? A. I received a bonus, in 1942; I recall that.

Q. You have explained that? A. I have explained that. I don't recall 1943, 1944, or 1945.

Q. I will ask you to look at Plaintiff's Exhibit 163. Will you read that? A. Do you wish me to read it aloud?

Q. No; read it to yourself. A. (After examining 1805 paper:) Yes, sir.

Q. Now will you read Plaintiff's Exhibit 164? A. (After examining paper:) Yes, sir.

Mr. Ingoldsby: The pertinent portions of Plaintiff's Exhibit 163 I should like to read into the record. This is a letter to Mr. James Markham, Assistant Alien Property Custodian, from Mason Houghland, president, Spur Distributing Company, Inc., dated October 25, 1943. The pertinent portion says—

Mr. Burling: I object to the characterization as "pertinent."

Mr. Ingoldsby: The portion which I wish to read at the present time, which I consider pertinent, is as follows:

"The indicated military demand, or anything near it, will certainly eliminate 'A' and 'B' coupons. It will incidently close down the Spur Company. If we are to protect ourselves by arranging credits, action must be taken at once. I don't see how it could be done later.

"The conversion of the A. B. C. stock into first mortgage bonds would certainly strengthen your condition and would enable the American stockholders to save themselves.

"We will be grateful if a decision can be arrived at upon this matter."

Plaintiff's Exhibit 164 is a letter to Mr. Houghland from S. J. Crowley, Chief, Division of Business Opera-
1806 tions, in which he states:

"Dear Mr. Houghland:

"I am in receipt of your offer of May 28, 1943—"

I beg your pardon.

Will you mark this, please, Mr. Clerk, as Plaintiff's Exhibit 165? I will strike the reading of Exhibit 164; it was an inadvertence.

(Copy of telegram from James E. Markham to Mason Houghland, October 30, 1943, was marked as Plaintiff's Exhibit 165 for identification.)

By Mr. Ingoldsby:

Q. Will you read that, please? Just read it to yourself (handing Plaintiff's Exhibit 165 to the witness). A. (After examining paper:) Yes, sir.

Mr. Ingoldsby: I guess we had better put these in as exhibits. You know what these are, don't you?

Mr. Burling: Yes.

Mr. Ingoldsby: I should like to offer at this time Plaintiff's Exhibits 165, 166, and 167.

(Annual report for 1944 and annual report for 1945 were marked as Plaintiff's Exhibits 166 and 167, respectively, and offered in evidence.)

By Mr. Ingoldsby:

Q. Mr. Houghland, I will ask you to look over Plaintiff's Exhibit 166, which purports to be the annual report 1807 of the Spur Distributing Company for the year 1944; and then will you look at Plaintiff's Exhibit 167, which is the annual report of the Spur Distributing Company for the year 1945? Will you look please, at the

balance sheet and the financial statement and then please explain to the Court whether or not those documents refresh your recollection as to whether the Spur Company made or lost money in the years 1943, 1944, and 1945. A. In the year 1944, which is the one that I have in my hand, it lost money, as I believe I told you. I recall that in 1944 it lost money.

Q. How much was that? A. Ninety thousand dollars.

Q. That was a $90,000 loss after a tax adjustment of $74,000; is that correct? A. Yes, sir.

Q. And the tax adjustment, of course, was for money which had been earned in prior years? A. That is correct.

Q. So without the adjustment you would have lost $90,000 plus $74,000? A. Yes, sir.

Q. Now, will you look at the next one? A. Yes, sir.

Q. Will you tell the Court, please, what it is you
1808 have in your hands there? A. It is the annual report of the Spur Distributing Company for the year 1945.

Q. Does that refresh your recollection regarding the operation of the company in a profit or loss condition? A. Yes, sir.

Q. For that year? A. Yes, sir.

Q. Will you tell the Court what the company did in that year? A. It lost $94,000.

Q. Was that after a tax adjustment also? A. No, sir.

Q. There was no tax adjustment in the year 1945? A. No, sir.

Q. I will ask you, again, to look at Plaintiff's Exhibit 166, and I will ask you particularly to look at the balance sheet dated December 31, 1944. I will ask you if you see there a comparison with the year 1943. A. Yes, sir.

Q. From that comparative balance sheet are you able to state whether the company made or lost money in 1943? A. No, I am not.

Q. You are not able to state from that? A. No.

1809 Mr. Burling: If Your Honor please, I appreciate the wide latitude Your Honor has granted me in cross examination, and I do not mean to object, but I do think I may properly object on the ground of relevancy here. I don't know whether the interrogation is with regard to the years after the Government took over the majority stock—

The Court: Have you any further questions along this line?

Mr. Ingoldsby: Not a great many, Your Honor, but I wanted to show the bias and the interest of the witness. I do not say that there is—

The Court: Do you mean that he has lost money after the war?

Mr. Ingoldsby: No; I intend to show that this witness made every effort within his power to acquire the stock of the Spur Distributing Company.

Mr. Burling: I suggest we get to that point.

Mr. Ingoldsby: We are getting there just as quickly as we can.

The Court: Do you mean that he deliberately caused losses; is that it?

Mr. Ingoldsby: No, Your Honor. I will make an offer of proof at this time.

The Court: I do not want to lead you.

Mr. Ingoldsby: I shall be delighted to make it. I

1810 want to show, first of all, that in 1943, at the time the company was losing money, Mr. Houghland endeavored to establish a bond issue for the purpose of eliminating the stock vested by the Alien Property Custodian which belonged to Mr. von Opel. Needless to say, if that had been done, if 73,000 shares of stock were taken out of existence, it would certainly change the position of this witness and a group friendly to him who also owned stock.

Mr. Burling: It would save a great deal of time if counsel would directly ask Mr. Houghland if that is a fact.

Mr. Gallagher: I think Mr. Burling's remarks come a little bit untoward. It will take Mr. Ingoldsby another five or ten minutes before he reaches that point. We have sat this out for many a day.

The Court: All right.

By Mr. Ingoldsby:

Q. Mr. Houghland, I refer again to Plaintiff's Exhibit 166. This does not have any page number, but it is the figure on the right-hand side under the column "1943," "Loss before tax adjustment $196,000." You agree that that figure is there? A. $196,344, yes.

Q. Does that refresh your recollection as to whether or not the company made or lost money in 1943? A. Well, we had a tax adjustment of $210,000 in that year, so it shows a $13,000 profit reported.

1811

Q. When you get a tax adjustment for a prior year, do you take that into account in determining whether or not you made or lost money for the current year? A. Yes, sir.

Q. You do. Didn't you determine that for that the current year you lost $196,000 and that you received a tax adjustment from prior years? A. I leave that to the auditors.

Q. I was asking you how you considered it. A. I am not much of an auditor.

Mr. Ingoldsby: I wish to read into the record at this time Plaintiff's Exhibit 165, which is a telegram to Mason Houghland, Spur Distributing Company, Inc., from James E. Markham, Deputy Alien Property Custodian, dated October 30, 1943. The wire reads as follows:

"It appears that it is not appropriate at this time to give approval to the proposal to convert stock into bonds in

view of the fact that the question of disposition of property belonging to an internee is under consideration by the Attorney General. We are satisfied that if we attempted to conform to this proposal injunction proceedings might be brought against us by internee's attorneys. The Attorney General's opinion when received may change this situation. If so we will advise you."

1812 By Mr. Ingoldsby:

Q. The question I want to ask you, Mr. Houghland is, will you explain to the Court your purpose in retiring the stock held by the Custodian for bonds during the period when the company was losing money? A. Yes, sir. I hoped to free the company from German ownership.

Q. Was that your reason? A. Yes.

Q. Was that your only reason? A. No. I felt we were going to continue in a period of bad operations and that we perhaps would strengthen ourselves greatly if we had this arrangement made; that we would do a better job; that it was not very popular to have German ownership in a retail organization in the United States when we were at war with Germany.

Q. You have stated that. Will you explain, please, how you intended to strengthen the company by incurring a bonded indebtedness? A. There would have been no strengthening of the company.

Q. Did I understand you to say that you expected to strengthen the company by doing this? A. I expected to strengthen the company by relieving it of German ownership.

1813 Q. Then, that was your only reason for doing this; is that correct? A. Doubtless.

Q. Isn't it a fact that the reason you attempted to do this was so that von Opel would not longer have control of the majority stock of the company? A. My reason was that German interests would not longer have control or the controlling stock of the company.

Q. Weren't you at the same time interested in getting control of the stock of the company for yourself or for your group? A. Yes; I would like to have had control of the stock. I don't believe I could have had it for myself, but I would like to have had control in American hands.

Q. And particularly your hands? A. I daresay. I would have been very grateful if it had been in my hands.

Q. So that was an additional reason for your efforts to transfer the von Opel stock to bonds? A. Yes.

Q. If the Government had accepted your proposal, it would have cost the company about $50,000 a year, wouldn't it? A. I don't recall.

Q. Do you recall—wasn't your proposal to give
1814 the Government bonds based upon the book value of the stock? A. I don't recall the details of the proposal now.

Q. Who worked out the details? A. I don't recall that.

Q. You don't recall who did that? A. No.

Q. Didn't you consider that as a matter of major importance? A. I imagine the details were worked out by Mr. Sims, the lawyer, but I don't recall the details of it.

Q. Mr. Sims is connected with the firm of Bass, Berry, and Sims, who are your attorneys in Nashville? A. That is correct.

Q Is that the same firm that are attorneys for the American National Bank in Nashville? A. Yes, sir.

Q. Is that the name of the bank? A. Yes, sir.

Q. You think, now, that Mr. Sims was the one who worked out the details of that plan? A. I think so.

Q. Under that plan, had it gone through, wouldn't the stock which you owned double in yield if and when the company made money? A. When they paid off the bonds, it would.

1815 Q. Well, whether they paid off the bonds or not, based upon the earnings of Spur for 1946 and 1947, if you had a 5 per cent debenture to meet, the remaining

stockholders would be better off than they would have been if the common stock had remained outstanding, wouldn't they? A. Whenever this had been paid off, they would have been, yes.

Q. Do I understand your testimony to be, then, that had this plan gone through, the remaining stockholders would not have made any additional money from dividends until the bonds had been retired? A. Not if I had been president of the company—they would not.

Q. Oh, you mean you would have retired the bonds before you would have paid out dividends? A. That is right.

Q. Which would have had the effect of increasing the equity of the remaining stockholders rather than paying out profits; isn't that correct? A. When you discharged the indebtedness, they would have been.

Q. Would you say that this was unusual procedure to have taken during a period when the company was losing money? A. I haven't had wide enough experience with corporate practice to know whether it is unusual or not.

1816 Mr. Ingoldsby: I offer in evidence Plaintiff's Exhibit 168, which also came from your files.

Mr. Burling: No objection.

(Minutes of special meeting, board of directors, Spur Distributing Company, Inc., November 9, 1944, was marked as Plaintiff's Exhibit 168 and offered in evidence.)

Mr. Ingoldsby: Plaintiff's Exhibit 168 purports to be a letter to Mr. W. D. Bradford, Assistant, Office of Alien Property Custodian, Washington, D. C., signed by H. D. Hines, of the Spur Distributing Company, and the letter includes or has attached thereto a copy of the Minutes of Special Meeting of the Board of Directors of Spur Distributing Company held on November 9, 1944.

By Mr. Ingoldsby:

Q. Mr. Houghland, do you at this time have any independent recollection of a meeting of the board of directors on November 9, 1944? A. Yes, sir.

Q. You do remember that? A. Yes.

Q. Then, do you recall—Let me put it this way: What particular significance does that meeting of the board of directors have for you? I will change the question: How is it you remember that particular meeting? A. Well, it involved a tremendous amount of activity and
1817 controversy thereafter.

Q. Do you mean that the reason you recall that particular meeting of the board of directors was that that was the first time that the problem was taken up with the board of directors of increasing the stock of Spur? A. No.

Q. What do you mean? A. Why, I mean it was a very momentous occasion. It involved me and the company and a very considerable controversy with the Alien Property Custodian.

Q. When was the last time that you read the minutes of this meeting? A. I don't recall; not too long ago.

Q. Give us your best recollection of how long ago. A. Two weeks.

Q. You read that in preparation for your testimony here, did you? A. Yes.

Q. Do you recall reading there a statement to the effect—and I quote:

"He pointed out that by careful and painstaking investigation the Alien Property Custodian had finally established beyond the question of a doubt that Uebersee Finanz-Korporation, A. G., while a Swiss corporation, held the
1818 stock for the beneficial ownership of the von Opel family, all of whom were German nationals and most of whom reside in Germany and have actively aided the German war efforts in the production of aircraft,

tanks, and rockets, it being commonly understood that the von Opels were the real inventors of the rocket principles for military use."

Do you recall reading that statement? A. Yes.

Q. Having read that, do you recall having made it? A. No, I don't recall having made it, but I am sure it is so.

Q. You accept this as so? A. Yes.

Mr. Burling: We stipulate that this is correct.

Mr. Gallagher: That is, that he made it?

Mr. Burling: No.

By Mr. Ingoldsby:

Q. My question is, Who told you that it had been "established beyond the question of a doubt that Uebersee Finanz-Korporation, A. G., while a Swiss corporation, held the stock for the beneficial ownership of the von Opel family"? A. Mr. Cecil Sims.

Q. Mr. Sims? A. Yes.

Q. Mr. Sims is your lawyer? A. Yes, sir.

1819 Q. Did he tell you where he got the information? A. Yes, sir.

Q. Where did he get it? A. He got it from a case in which the von Opels were involved, called the Gold Case in 1935, a Federal case in New York.

Q. Did you have a lengthy conversation with Mr. Sims about this? A. Yes.

Q. I understand that your statement says:

"He"—meaning you—"pointed out that by careful and painstaking investigation the Alien Property Custodian had finally established beyond the question of a doubt."

You did make that statement, did you? A. I imagine so; it is there.

Q. Then, who in the Alien Property Custodian's office did Mr. Sims attribute the statement to? A. I don't know.

Q. Well, your best authority for that statement at the

present time, you mean, is Mr. Sims, your own lawyer; is that correct? A. That is correct.

Q. You never talked to anyone in the Alien Property Custodian's office prior to the time you made that
1820 statement, did you? A. I talked to everybody in the Alien Property Custodian's office, I think.

Q. Well, I assume you did. My question should have been, You did not receive any information from anyone in the office of the Alien Property Custodian— A. Yes, I did.

Q. (Continuing) from anyone who stated that they, after a careful and painstaking investigation, had established these facts beyond any doubt? A. Yes.

Q. That is my question: Who gave you that information? A. I attended a meeting in Mr. Martin's office. He called over a man from the Department of Justice, whose name I don't recall, and called in a lawyer from the Alien Property office, and there was a general discussion at that time, and that was the purport of the discussion Mr. Sims had with me at the time.

Q. You really got your information, not from Mr. Sims' reading of the Gold case, but you got it from the Department of Justice itself; is that correct? A. Well, they were introduced to me as two lawyers from the Department of Justice. As far as getting the information is concerned, I got the information from Mr. Sims. You asked me did I ever talk to anybody in the Department of
Justice about it. I told you I did, and who, and
1821 everybody, I think.

Q. Did you talk to them about this statement before you made the statement? A. About that statement?

Q. Yes. A. No.

Q. I see. It was on Mr. Sims' statement, then, that you made the statement? A. No, I wouldn't say so—on his say so.

Q. On whose say so? A. I don't understand exactly what you mean by "say so."

Q. On the information provided by Mr. Sims? A. I would say that was largely true, yes.

Q. You knew at the time you made this statement that it was incorrect, didn't you? A. No.

Q. You didn't know that? A. No.

Q. Contained in the statement is the following: that "the Alien Property Custodian had finally established beyond the question of a doubt that Uebersee Finanz-Korporation A. G., while a Swiss corporation, held the stock for the beneficial ownership of the von Opel family, all of whom were German nationals and most of whom
1822 reside in Germany and have actively aided the German war efforts in the production of aircraft, tanks and rockets, it being commonly understood that the von Opels were the real inventors of the rocket principle for military use."

A. Do you wish me to tell where I got that information?

Q. No; I won't ask that question. You knew that that statement was incorrect, didn't you? A. No.

Mr. Burling: I object to that statement. It is correct. You have not gone into it. It is proved beyond shadow of a doubt that the Opel plants produced tanks for Germany.

The Court: He answered "No."

By Mr. Ingoldsby:

Q. Didn't you testify this morning that you learned that the Opel plant had been sold to General Motors? A. Yes.

Q. You knew that after 1931 the Opels did not own the old Opel Works, didn't you? A. Yes.

Q. You knew that General Motors did own it? A. Yes.

Q. So if there was any production from this plant, it was the old Opel plant and not the plant now owned by the Opels?

1823 Mr. Burling: I object on the ground that the testimony has been clear that Wilhelm von Opel was chairman of the board of Adam Opel—

The Court: What are you trying to prove?

Mr. Ingoldsby: I am trying to prove that the statements were false and that the witness knew that they were false.

Mr. Burling: It is not false. It is what Fritz von Opel has stated and what Wilhelm von Opel has stated by deposition.

The Court: I do not think I am trying that issue here. Are you trying to prove that he made a false statement?

Mr. Ingoldsby: Yes.

The Court: In connection with what?

Mr. Ingoldsby: This, Your Honor, is all prefatory to the stock increase plan which the board of directors put through shortly after this. I think that surely the opportunity for argument should be afforded to show that as a result of some of these statements a stock plan was put through to increase the stock, so as to disturb the control which was formerly held by Mr. von Opel.

The Court: Suppose you establish that. Then what?

Mr. Ingoldsby: Then, I think I have established a very substantial interest on the part of this witness.

The Court: He had admitted that, hasn't he? Hasn't he admitted it?

1824 Mr. Ingoldsby: He has admitted that he would like to have acquired the stock.

The Court: I think he admitted that he took steps to acquire it; or did he?

Mr. Burling: I think I have tried to concede it. I tried twenty minutes ago by my watch. Mr. Gallagher said it would take five more minutes. I still offer to concede that this witness tried to get the Custodian to sell the shares which were vested, taken away from the von Opels.

Mr. Ingoldsby: That is all fine and dandy for stipulation; but our contention is that the witness went so far—we wish to show the extent to which the witness went in

attempting to acquire interests which were held by von Opel. That being the situation, I think his testimony must of necessity be colored.

The Court: I will permit you to go ahead. I am not going to rule on whether I think you are bound by his answer or not. It may be that this is collateral and that you are bound by the answer, but I am going to permit him to answer within reasonable bounds. He said it was not true. So I will let it stand and rule later.

Mr. Ingoldsby: Your Honor, I do not want to appear argumentative; I simply want to point out that I do not intend to pursue the matter much further, but I do want to show that the lengths to which the witness went
1825 in the attempted acquisition of this stock were such that they were ultimately designated as illegal activity. That is what I am leading up to.

The Court: I doubt whether that would be material matter.

Mr. Ingoldsby: Designated by the Custodian.

The Court: You can show anything that tends to show bias or untimely or undue interest to gain control of the company.

Mr. Burling: I think if there is to be any showing of designation of illegality, it should be by proof and not by counsel's characterization.

The Court: I have already said I will not draw that conclusion. I will permit this. The only thing I do not want to do is to get off on some collateral issue here. You understand what I mean.

Mr. Ingoldsby: I understand what you mean.

The Court: I do not know whether Mr. von Opel's father, as chairman of the board of the von Opel Works, was furnishing tanks or rockets or planes. I do not think I can try that issue here.

Mr. Ingoldsby: I do not intend to pursue that matter any further.

Would you mark these next three documents, please, Mr. Clerk?

1826 (Minutes of special meeting of board of directors, Spur Distributing Company, November 6, 1944, were marked as Plaintiff's Exhibit 169.)

(Copy of letter December 29, 1944 from James E. Markham to J. M. Houghland was marked as Plaintiff's Exhibit 170.)

(Copy of letter December 20, 1944 from James E. Markham to Equitable Securities Corporation was marked as Plaintiff's Exhibit 171.)

By Mr. Ingoldsby:

Q. I want to ask you what you finally did—what the company did—as a result of that meeting of the board of directors in November, 1944. A. The company sold 20,000 shares of Spur stock to the Equitable Securities Company and gave them an option on 50,000 more.

Q. That was done by resolution of your board of directors, was it? A. That is right.

Q. Who was on the board of directors at that time? A. Mr. Sims, Mr. Paul M. Davis, Mr. Henry Duncan Hines, myself, and the representative of the Alien Property Custodian, but his name escapes me, as they changed rapidly.

Q. Was it Mr. Bradford? A. No, I don't believe it was; I am not sure.

1827 Q. At the time you increased the stock, as you just testified, who constituted the board of directors? A. The men I have named there.

Q. The men you have named? A. I failed to name one, but I can't recall that one.

Q. Mr. Sims was your lawyer; is that correct? A. That is correct.

Q. Who was Mr. Davis? A. What do you mean by "who"?

Q. What was his position? A. He is president of the American National Bank in Nashville.

Q. He is a very close personal friend of yours, is he not? A. Yes.

Q. Mr. Hines was a member of the board? A. Yes.

Q. He is your brother-in-law? A. Yes. We married sisters.

Q. You were there yourself? A. Yes.

Q. Do you recall whether or not at this meeting of the board a representative—and by "this meeting" I mean the one of November, 1944—was a representative of the Office of the Alien Property Custodian pres-
1828 ent? A. No.

Q. Who owns the Equitable Securities Corporation? A. I don't know the entire ownership or any substantial number. I couldn't make a statement of that sort. I can tell you who heads it.

Q. Who heads it? A. Mr. Brownlee Currey, I believe it is.

Q. Does Mr. Davis have anything to do with Equitable Securities Corporation? A. That I don't know; not that I know of.

Q. Do you have anything to do with it? A. No.

Q. Did you have any arrangement at the time of this increase with the Equitable Securities Corporation for the purchase of that stock? A. No.

Q. What was the consideration which was paid for this increased stock? A. Book value?

Q. Book value at that time was how much? A. $13.31, I believe, or $13.37; I don't recall which.

Q. Per share? A. Per share, yes.

Q. What finally came of the increased stock? A. It was issued in the—Mr. Markham, Alien Property
1829 Custodian, ordered it returned and the deal nullified, but we maintained that we had a legal right to

issue stock, and we finally compromised, and our legal rights were left in doubt, but restitution by exchanging money and stock was made, and the company was put in status quo.

Q. If this proposed transaction had gone through, that would have changed Mr. von Opel's position from that of majority stockholder to that of minority stockholder, wouldn't it?

Mr. Burling: I object, Your Honor. Mr. von Opel did not have any position then, in Uebersee, in 1942. The Custodian vested the stock. Title was in the Custodian.

Mr. Ingoldsby: There is a great deal of question about that, particularly when he has the title of Custodian.

The Court: You can handle that on redirect.

Mr. Ingoldsby: What was the question, please?

The Reporter (reading): "Question: If this proposed transaction had gone through, that would have changed Mr. von Opel's position from that of majority stockholder to that of minitory stockholders, wouldn't it?"

The Witness: Yes.

By Mr. Ingoldsby:

Q. That was an end which you desired; isn't that correct? A. Yes.

1830 Mr. Ingoldsby: At this time I offer in evidence Plaintiff's Exhibits 169, 170, 171, and 172.

(Plaintiff's Exhibit 169, 170, 171, and 172, were offered in evidence.)

Mr. Ingoldsby: Plaintiff's Exhibit 169 purports to be letter dated November 6, 1944, to Mr. Bradford, signed by Mr. Hines, and includes minutes of the meeting of the board of directors held on December 2, 1944. For the purpose of further identification, these are the minutes of

the meeting at which the increase took place, at which the increase in the stock was voted.

1831 I next wish to offer Plaintiff's Exhibit 172, which is a wire addressed to Spur, at Nashville, Tennessee, signed by Francis J. McNamara, Deputy Alien Property Custodian, which reads:

"Please be advised that the Alien Property Custodian has today taken supervision of the Spur Distributing Company by supervisory order No. 251 which is being forwarded to you today. Hereafter any transactions by the company and particularly the issuance of any additional stock by the company will require the authorization of the Custodian or his duly authorized representative."

(Plaintiff's Exhibit 172 for identification was offered in evidence.)

Mr. Ingoldsby: I offer Plaintiff's Exhibit No. 171, which is a copy of a telegram to the Equitable Securities Corporation, Nashville, Tennessee, signed by James E. Markham, Alien Property Custodian, dated December 20, 1944, which reads:

"Re action of Spur Distributing Co., Inc. in purportedly entering into a contract with you dated December 2, 1944, concerning the issuance of certain stock and other matters, you are advised that such purported action was contrary to the order and instruction of the Alien Property
1832 Custodian and consequently in violation of applicable provisions of law and subject to the penalties therein provided."

(Plaintiff's Exhibit 171 for identification was offered in evidence.)

Mr. Ingoldsby: I now wish to offer Plaintiff's Exhibit No. 170, which is a copy of, I assume, a telegram. I can't tell definitely whether it is a telegram or letter. It is a letter to J. M. Houghland and Alver E. Peterson, Secre-

tary, Spur Distributing Company, Inc., Franklin Road, Nashville, Tennessee, from James E. Markham, Alien Property Custodian, dated December 29, 1944, which reads:

"In view of requested postponement of meeting"—this is a wire—originally scheduled for December 27, 1944 to January 13, 1945, I wish again to make it clear that action taken on or about December 2, 1944 in issuing to Equitable Securities Corporation shares of common stock of Spur and granting an option to purchase further shares, was contrary to my orders and instructions and illegal and void. You are directed to make no disposition of any of the proceeds received by Spur from Equitable nor shall any such funds be in any way committed. Any expenditure or commitment of these funds for the acquisition of real or personal property or otherwise would be illegal and will subject parties to penalties provided by law and other action."

1833 (Plaintiff's Exhibit 170 for identification was offered in evidence.)

By Mr. Ingoldsby:

Q. Now, with reference to the 20,000 shares which were immediately issued, were they actually paid for? A. Yes.

Q. And the money was received by the treasury of Spur? A. That is right.

Q. And as a result of the action taken by the Alien Property Custodian, this money was returned to the Equitable Securities Corporation; is that correct? A. That is right.

Q. And the additional 50,000 shares which had been issued were canceled? A. That is right, or were returned to the company.

Q. Returned; all right.

Now, this morning you testified, did you not, that in 1938 you had a conference with Mr. von Opel and Mr. Frankenberg in New York; is that correct? A. No, sir.

Q. You did not say that? A. No, sir.

Q. When did you say you did have a conference with Mr. von Opel and Mr. Frankenberg in New York? A. I believe I said that I had a conference with them in 1937.

1834 Q. That was in 1937, you say? A. That is my recollection of it.

Q. And then I believe that you stated that you had a telephone conversation with Mr. von Opel in 1939, when you were in London and he was in Cologne, Germany; is that correct? A. Yes, sir.

Q. And then you had a telephone conversation, transatlantic, with Mr. von Opel in September, 1939, when you were in Nashville and Mr. von Opel was in Zurich, Switzerland; is that correct? A. That is right.

Q. Then you testified about a meeting with Mr. von Opel in Savannah, Georgia, in January, 1941; is that correct? A. That is correct.

Q. With reference to each one of these meeting or conversations, you have provided the representatives of the Government with memoranda, have you not? A. No, sir.

Q. You have not? A. No, sir.

Q. You did not make any written statement to the Government about this? A. No, sir.

Q. Are you sure about that? A. I am positive.

1835 Q. Do you recall executing an affidavit on the 24th day of May, 1944, before a Mary E. Woodall, a notary public? A. I would like to qualify my answer to your statement.

Q. All right. A. I thought you meant the lawyers in this case.

Q. No. I am talking about any representative of the Government. A. Oh, yes.

Q. Well, then, you did give them statements relating to each of the— A. I can state it broadly. I have told the representatives of the United States Government everything I knew and any bit of contact I have had at any time with any Germans.

Q. I assume that they were told at least that much. Now, what I wanted to ask you about was with regard to the meetings or conferences or conversations which I have just described. I wanted to ask you when you first made these statements to the Department of Justice. A. I don't recall.

Q. Could you give us any idea? A. No. I have had so many conferences, I could not.

Mr. Burling: Since counsel for both sides have been associated with the Department of Justice, I suggest
1836 that you clear whether counsel is referring to the F. B. I. as being with the Department. Sometimes the F. B. I. refers to the Department, meaning the lawyers in the Department. It is ambiguous.

Mr. Gallagher: You know they are not separate units.

Mr. Ingoldsby: If Mr. Burling can tell me, it will be all right with me. I am talking about some statements which have been provided us by Mr. Burling. All I want to know is when he made those statements.

Mr. Burling: The ambiguity is between F. B. I. agents and the Department of Justice lawyers, that is all.

Mr. Ingoldsby: That is all right. I can clear that up.

By Mr. Ingoldsby:

Q. You do have a recollection of telling someone in either the F. B. I. or in the Department of Justice about the telephone conversations or conferences which I have just enumerated, do you not? A. I don't have a specific recollection of telling anybody about those except the lawyers in this case, but it is quite possible that I did. I told them everything I knew.

Q. You say you have no recollection of giving— A. No specific recollection of who or where or when.

Q. Will you agree with me that you did tell somebody in either the F. B. I. or the Department of Justice about the incidents which I have just referred to? A. I
1837 think probably—I could not make an absolute statement to that effect, but I think probably.

Q. Now, my question is, did you get that statement from any prepared memorandum which you had made at the time of the conversations or was it based entirely upon your recollection of the facts? A. I don't even recall when I made the statement. The only thing I can say to you is that I probably did. I told them everything that I knew, which they asked me or that I could recall.

Q. But you have no particular recollection at this time of making any statements regarding the matters which I have just alluded to? A. No. I could not separate a definite statement and a definite time.

Q. Do you recall whether or not you had any records with you at the time that you made any of these statements to the Department? A. No.

Q. How many times would you say you talked to representatives of the F. B. I. or the Department of Justice since January 1, 1942? A. I would be unable to make an estimate.

Q. I want to ask you particularly about the statement which you made this morning. I do not purport to
1838 quote you exactly, but you correct me if I am in error.

Did you say that in the latter part of August, 1939, you were staying at the Carlton Hotel in London and upon your arrival in London you received a telephone call from von Opel from Cologne, Germany, asking you to come and visit him upon the family estate near that city? A. Yes.

Q. That is about it. Now, at that time that was the latter part of August, 1939. Can you establish the date any

more definitely than that? A. I could if I had the information here and you could obtain it or I could obtain it for you. I sailed on the last trip of THE NORMANDIE, and this was immediately preceding that trip, which landed here just a few days before war was declared. The war, I believe, was declared between England and Germany on the 3rd of September, so it was very close to the end of August.

If I were to attempt to say the exact date, I would doubtless be in error.

Q. Very close to the end, in any event? A. Yes.

Q. Now, will you relate the circumstances under which you made that call? Where were you and who placed the call, and just give us any information that you can remember about the placing of that call. A. The first call
1839 was from Fritz von Opel to me, not from me to Fritz von Opel.

Q. All right. With regard to the first call, where did that call come from? A. It came from Cologne, Germany.

Q. And how do you know that? A. Well, that is what the operator said.

Q. You recall definitely that the operator said that it was Cologne, Germany, calling? A. Yes, I do.

Q. What fixes that so vividly in your recollection at this time? A. This is a very unusual circumstance for me.

Q. How do you mean that? A. The world was about to plunge into war and I was over on the other side.

Q. And so it impressed you very definitely that this was a call from Germany and that Germany was about to go to war, and that is what fixed that date? A. Yes. The whole circumstances are quite vivid.

Q. And as a result of that call you later called Fritz von Opel; is that correct? A. The following day, yes, sir.

Q. So at that point we are pretty close to the very end of August, 1939; isn't that right? A. Not very close
1840 to the very end of August, no, but you are getting in the latter quarter of 1939.

Q. All right. It would definitely, then, be some time after August 20, 1939; correct? A. I won't make a definite statement on that, but it must have been in that neighborhood.

Q. Now, will you tell us about your making that call to Mr. von Opel? A. I answered the next day, as I told him I would, and called him back.

Q. And where did you call him? A. Called him through the same exchange, Cologne. He gave me the number to call. I have long since forgotten that.

Q. Do you recall whether it was a hotel or where it was you called him? A. No, I don't. I called a number and an exchange through Cologne, is all I know.

Q. Do you have your hotel bills at the present time from that trip? A. I imagine I have, yes.

Q. Do you have them with you? A. No.

Q. Have you at any time turned them over to the Government? A. No.

1841 Q. That call was definitely made from your hotel, wasn't it? A. Yes.

Q. You are sure about that? A. Very sure.

Q. And your bill would so reflect, I take it, would it? A. I think so.

Q. That was the occasion when Fritz von Opel stated that he was very insistent that you come, and he said that he wanted you to meet and become acquainted with his father, and he pointed out that, after all, you worked for his father and it would be to your interest, as well as to his father's, that the two of you become acquainted? Is that about the gist of the conversation? A. That is about the gist of it; yes, sir.

Q. You had been in Germany before that, in 1934, hadn't you? A. Yes.

Q. Didn't you go to Wiesbaden in 1934? A. No, sir.

Q. How close did you come to Wiesbaden? A. I don't know just exactly where Wiesbaden is, as a matter of fact. It is somewhere in the Rhine country, I know, in the lower Rhine country, but I don't know where.

Q. You were quite close to it, however, were you
1842 not? A. No.

Q. You were not? A. No. I went through France and Southern Germany and into Switzerland.

Q. In any event, you did not meet Mr. von Opel's father in 1934 when you were in Germany, did you? A. No.

Q. Now, you were in Germany again in 1937, were you not? A. Yes.

Q. Now, who prepared your itinerary at that time? I should change that and say, who prepared your itinerary for that trip? A. I did.

Q. Did Fritz von Opel assist you? A. He wrote me a letter giving me suggestions about places to visit, yes.

Q. Did you visit those places? A. No, not all of them; some of them. I could not answer the question. I can't even recall the series of places. I think he recommended that I visit the Tyrol, and I did visit the Tyrol, and he told me a number of places to visit.

Q. In 1937 did you go to Wiesbaden? A. No. I have never been to Wiesbaden.

Q. You have not been there? A. No.

1843 Q. Do you recall a suggestion from Fritz von Opel that you go to Wiesbaden and view the Wilhelm von Opel swimming pool, which was supposed to be quite a show place in Wiesbaden? A. No.

Q. You do not remember that? A. No.

Q. You do not say it did not happen, do you? A. No, I would not say it did not happen, but I would certainly say very positively I don't recall it.

Q. Have you ever been in Heidelberg? A. Yes.

Q. Do you know how far Heidelberg is from Wiesbaden? A. I don't know where Wiesbaden is.

Q. Don't you know, as a matter of fact, that Heidelberg is quite close to Wiesbaden? A. No, I don't.

Q. But, in any event, neither in 1934 nor in 1937 did you visit Mr. Wilhelm von Opel? A. No.

Q. And such a suggestion was never made by Fritz von Opel? A. Not that I recall.

Q. Now, I want to ask you about the telephone conversation which you have testified about this morning. I will ask you if you stated that on September 18, 1939, you received a cable from Fritz von Opel from Zurich, Switzerland, and on September 21, 1939, you cabled the Uebersee Korporation and that afterwards—that is, after September 21, 1939—you called Fritz von Opel in Zurich upon the transatlantic telephone and talked to him concerning the proposed sale? Is that correct? A. It is nearly correct.

1844

Q. Will you tell me where it is wrong? A. Well, I couldn't tell you where it is wrong, because I have some thought that I called on the same day that I sent the wires that I put in the telephone call, but if I did not, it was very close.

Q. You mean that you think that you called him on the same day that you sent the cable? A. That I sent the cable to Adler and Company and Frankenberg.

Q. Do you recall that that was on September 21, 1939? A. I think it was, yes.

Q. And how do you fix that day? A. I think I have copies in my files of those wires.

Q. I am reading from a document given us by the Department of Justice. These are not my own ideas.

The occasion when you sent that cable, that was sent to Mr. Gaeng and not to Mr. von Opel, was it?

1845

A. I sent a cable to Adler and Company, to Frankenberg and Gaeng, and to Uebersee—separate cables.

Q. All in September? A. Calling attention—on the same day, and calling attention to the fact of my rights which I had under the contract with Uebersee.

Q. Whether it was before or after or on the same day, the cable was sent. You did have this transatlantic talk with Fritz von Opel; is that correct? A. I did, yes.

Q. Did you say that he, meaning Fritz von Opel, replied that the proposed sale was greatly against his wishes, that he had done everything he could to prevent it, but could not change his father's mind upon the subject, and that his father insisted that the sale go forward? A. Yes.

Q. And did you also state that "he", meaning Fritz von Opel, "explained to me, as he had done many times before, that while the management of these affairs was to a large degree in his hands, the real control and ownership remained in his father's hands and that his father had directed Mr. Frankenberg to proceed with the sale of the stock." Did you state that or substantially that? A. I think substantially that, yes.

1846 Q. So it is your testimony at the present time that in the latter part of September, 1939, and in the latter part of August, apparently a week or two before Germany and England went to war, Fritz von Opel told you, over transatlantic telephone, that this was his father's property and not his own? A. Yes.

Q. That is your testimony? A. I testified that over transatlantic telephone from Zurich, that in September I was told that. I did not testify that I was told that in August.

Q. You did not testify to that? A. No, sir. All I was told was Fritz' remark that, "After all, you work for my father." There was nothing said about property ownerships in August.

Q. I see. So when you were told over the telephone from Germany to England, or vice versa, that, after all, you worked for his father, you were in effect being told that Spur was his father's property, weren't you? A. I think so, yes.

Q. It is your testimony that you were so told about two weeks before Germany and England went to war? A. That is right.

Q. Are you aware of the difficulty which Wilhelm von Opel had with the German Government as a result
1847 of this gift? A. Yes.

Q. And you had known of it for some time?

Mr. Burling: Will you fix the date as to when he knew it?

Mr. Ingoldsby: All right.

By Mr. Ingoldsby:

Q. When did you first learn it? A. Of the German Government?

Q. When did you first learn about the difficulty which Wilhelm von Opel had had with the German Government as a result of the gift which he made to his son Fritz? A. I couldn't state that definitely. I couldn't answer that definitely.

Q. Could you give me the year? A. No, I could not. I had had snatches of information about it, but I could not place the year.

Q. Did you ever talk to Fritz about it? A. About the difficulties?

Q. Yes. A. No. I don't recall a conversation—I recall a conversation with Mr. Hoffacker on the subject.

Q. And it is your best recollection at the present time that you never talked to Fritz about this? A. About the difficulties?

Q. About the difficulties which his father had.
1848 A. No. I don't recall having talked to him about his difficulties.

Q. I want to ask you about when you first learned about Fritz von Opel becoming a Liechtenstein citizen. A. I

first learned it, I believe, from the newspapers in 1940. If I were hazarding a guess, which is what it would be, it would be either in May or June of 1940, when Fritz was interviewed in New York upon his arrival in this country.

Q. And that was the first time that you learned about the Liechtenstein citizenship? A. In that period, certainly. At the time of his arrival at my house was the first time. I could not place it just exactly.

Q. And from then on did you consider him to be a Liechtenstein subject? A. No, sir.

Q. You did not? A. No, sir.

Q. I want to ask you about something else.

Do you have in your possession any correspondence with Fritz von Opel, whether they be telegrams, letters, or anything else, in which he ever told you in writing that which you say he told you over the transatlantic telephone? A. No, sir.

Q. Have you examined your files carefully to see
1849 whether or not you have any such document? A. Not with that intent, but I have examined my file.

Q. And you are satisfied that you never received any such written document from Fritz von Opel? A. Yes.

Q. I want to ask you about the occasion when you first learned that Wilhelm von Opel was in any way involved in the ownership of the Spur stock. When did you first learn it? A. At the first directors' meeting at which the German interest appeared, through Mr. Theodore Hoffacker.

Q. What year was that? A. That was in 1932.

Q. And it is your testimony that on various occasions since that date Mr. von Opel repeatedly told you that his father was the real owner of the Spur stock; is that correct? A. No.

Q. That is not correct? A. I did not make such a statement.

Q. You did not? A. No.

Q. Did you make a statement to the Justice Department to the effect that he, meaning Fritz von Opel—and I am talking about the Zurich telephone conversation—"explained to me as he had done many times before, that while the management of these affairs was to a large de-
1850 gree in his hands, the real control and ownership remained in his father's hands." Do you recall? A. I don't recall, but if the F. B. I. said it, it must be correct.

Q. Well, does that refresh your recollection any as to whether or not Mr. von Opel had told you many times? A. No, I don't recall.

Q. What is your testimony at the present time? Did he—or did he not tell you on many occasions that his father was the true owner? A. I would change "many occasions"—I would modify "many occasions."

Q. What modification would you make? A. I don't know that he ever used the exact expression that his father was the true owner, but he had made affidavit as to the ownership, as to the true ownership. I had had a great deal of information on the subject from Mr. Theodore Hoffacker, his representative.

Q. No. I am talking about what Mr. von Opel said. You wanted to modify the statement that he had on many times made a statement pertaining to ownership. You are talking about "he," Fritz von Opel? A. Yes.

Q. My question is, if you want to modify that statement, what modification do you want to make? A. Well,
1851 I would say upon several times.

Q. On several occasions, then; and the occasions to which you refer are all the occasions which you have stated this morning; is that correct? A. I don't know if that is correct, no.

Q. Now, you just stated a moment ago that Fritz von Opel never definitely said that his father was the owner, but he inferred as much; is that correct? A. No; I don't recall having just stated that.

Q. You do not recall saying that? A. No.

Q. Well, did he or did he not tell you in so many words that his father was the owner? A. When?

Q. Any time. A. Yes.

Q. And on how many occasions did he tell you that? A. I can't recall how many occasions. There was no secret about the matter at the time. He had made affidavit about it.

Q. I know about the affidavit. I know all about it. Have you read that affidavit? A. Yes, sir.

Q. Is that the authority for your statement that his father was the owner? A. No.

1852 Q. It is the word of Fritz von Opel himself, isn't that correct? A. That is right.

Q. And that is your testimony; isn't that correct? A. Authority for which statement? The statement I am making right at this moment?

Q. Yes. A. Yes. As regards the Zurich telephone call?

Q. Well, the Zurich telephone call and the others which you attribute to Mr. von Opel.

Now, I want to ask you this. The first time that you knew about Mr. von Opel's father being interested as an owner was in 1932, you stated; is that correct? A. That is right.

Q. And at that time you were president of the Spur Company, were you not? A. I was yes.

Q. And on many occasions since 1932 you have followed the instructions of Mr. Fritz von Opel, have you not? A. Very, very few occasions. I can't recall any instructions from Mr. Fritz von Opel, although it is perfectly possible that there were. I followed the instructions of Mr. Theodore Hoffacker.

Q. Did you ever follow any instructions given you
1853 by Mr. Fritz von Opel? A. I never recall one time —I never recall his ever having given me any instructions.

Q. So it is that you do not recall his giving you any; it is not that he gave you any and you ignored them? A. No.

Q. And you on various occasions discussed the company's business with Fritz von Opel, did you not? A. Yes.

Q. And you considered him in effect as your boss, did you not? A. I certainly considered him as a very important part of it, yes.

Q. Now, did you ever have any written instructions from anyone to the effect that Fritz von Opel was acting as the agent for his father? A. I don't recall any such instructions.

Q. Well, then, is it your testimony that you as president of Spur accepted Fritz as the agent of his father, despite the fact that you previously knew that his father was the true owner and that Frankenberg was the financial adviser; is that correct? A. No. I accepted men—first, Theodore Hoffacker, and, next, Mr. Ulrich, who were representatives of whatever interests controlled Uebersee. Mr. von

1854 Opel never interfered in the business.

Q. No. He gave you a completely free hand, didn't he? A. Somebody did, after some period of turmoil. After the company was shown to be profitable and, I hope, well managed, why, there wasn't much interference in later years, particularly after Mr. Hoffacker got out. Mr. Hoffacker occupied a very dominant position as a man giving me instructions.

Q. That is correct in the early days, isn't it? A. That is exactly correct, yes, sir.

Q. Now, did I understand you to state that you did not consider Mr. Fritz von Opel a citizen of Liechtenstein? A. Yes.

Q. Do you recall making a report to the Treasury Department on October 20, 1941—

Mr. Burling: May I see the document you are reading?

Mr. Ingoldsby: I am just asking him if he recalls.

Mr. Burling: Before you read anything into the record, may I see the document?

(A document was handed to Mr. Burling.)

Mr. Burling: Since the document shows on its face that the witness did not make the report, I suggest it is improper to ask him if he recalls making it.

Mr. Ingoldsby: It is made by his agent.

Mr. Burling: If Your Honor please—

1855 The Court: You will have to prove some knowledge on his part.

Mr. Ingoldsby: It shows on its face that it was made by the executive vice president.

The Court: I will have to hear the question before I rule upon it.

Mr. Ingoldsby: The question is whether or not he knows that on the 20th of October, 1941, Mr. H. D. Hines, the executive vice-president of Spur, stated to the Treasury Department, in connection with an application for a license to engage in foreign exchange transactions, that 73,039 shares of Spur stock are owned by Fritz von Opel and are outstanding in the name of Houvis and Company, Nashville, nominee. Pay the proceeds of the dividend due Mr. von Opel to a blocked account in his name, as a national of Liechtenstein, in the American National Bank of Nashville, Tennessee. The company was incorporated in Delaware in 1928. The company does business only in the United States. About 51 percent of the stock of the company is controlled by Fritz von Opel, who is a national of Liechtenstein.

Mr. Burling: I object to the question. The question is, Does this witness know that X, a person who is not a witness here and not a party to the suit, filed a report?

The Court: I will overrule the objection, subject to being connected up.

1856 Mr. Ingoldsby: I can't get it all in in one jump.

The Court: Let him answer yes or no.

By Mr. Ingoldsby:

Q. Did you hear what I have just read from this document? A. I heard what you read, if you will repeat the question.

Q. Do you want to read it? A. No, I don't want to read it.

Q. Do you want to see the document? A. No. I ask you if you will be kind enough to repeat the question.

Mr. Burling: May I have the right to move later to strike?

The Court: Certainly.

Mr. Burling: If he fails to connect it.

Mr. Ingoldsby: My question is—

By the Court:

Q. Do you know if Mr. Hines made that statement? A. Yes, sir.

Q. You knew he made it? A. Yes, sir.

Q. Did you authorize it? A. No, sir.

Mr. Burling: Then, I move to strike it.

1857 The Court: Do you want to ask him any further questions?

Mr. Ingoldsby: Yes.

The Court: Let us wait until he gets through that line.

By Mr. Ingoldsby:

Q. You did not authorize the making of it by Mr. Hines? A. No, sir.

Q. But you stated you did know it was made by Hines? A. That is right.

Q. Did you take any action by way of advising the Treasury Department that that information was incorrect? A. No.

Q. You let the Information stay, even though you did not authorize it? A. that is right. I do not say that I did not authorize it. I did not authorize it in the beginning. I approved it.

Q. But you did approve it? A. I approved it in conversation with Mr. Hines. I was out of town at the time it was made, but when I returned and he told me what had been done, it met with my approval.

Q. Well, do you find that in any way in conflict with your statement that you did not consider Mr. von Opel a citizen or a national of Liechtenstein? A. No, I did not make the report. I was not even here.

1858 Q. I am not asking you if you made the report; I am asking you if you find anything inconsistent between your approval of that report and your previous statement that you did not consider Mr. von Opel a citizen or a national of Liechtenstein. A. No, I do not find that in any way inconsistent.

Q. You do not see anything inconsistent in the two? A. No.

Mr. Ingoldsby: Your Honor, I am almost through. I wonder if we might have a 5-minute recess.

The Court: A 5-minute recess.

(A short recess was had.)

By Mr. Ingoldsby:

Q. Now, Mr. Houghland, I wanted to ask you about your testimony this morning regarding your meeting with the F. B. I. in January, 1942, when two F. B. I. agents came to your house. Am I correct in stating that— A. Yes, sir.

Q. —occasion as being January, 1942? A. That is my recollection of it, yes.

Q. And is that the first occasion that you made any statement to the F. B. I. regarding Fritz von Opel? A. I don't recall. There were people there when the freezing order took place. Whether they were F. B. I. people or not, I don't recall.

1859 Q. You do not recall expressly making any statement to the F. B. I. agents about Fritz von Opel prior to January, 1942; is that correct? A. That is the first time I recall it, that is right.

Q. Do you recall at this time the names of the agents that you talked to in 1942? A. No, sir.

Q. And you did not make any memorandum of that meeting at all, did you? A. I don't recall.

Q. Do you recall making any memorandum concerning that meeting? A. No.

Q. Your answer is no? A. No.

Q. Now, is it correct that the way the F. B. I. agents came to your house was to knock on the door late at night, and you invited them into the library? Is that correct? A. Yes.

Q. And they questioned you at some considerable length before they identified themselves? A. No. They shortly identified themselves. They questioned me, and I was reluctant to answer their questions, and then they produced their credentials.

Q. But you did let them into the house and take 1860 them into the library before you knew that they were F. B. I. agents? A. Yes.

Q. How did they get into the house? What did they say or do to get in? A. They pretty near put their foot in the door and came in.

Q. And then you sat and talked with them in the library for some time before you discovered they were F. B. I. agents; is that correct? A. For a short time.

Q. Was it during that meeting that you told the F. B. I. about your version of an incident relating to a falcon and Mrs. von Opel? A. To a what?

Q. A falcon, a bird. A. I don't recall anything of that, no.

Q. You do not recall any such statement made by you? A. No.

Q. Do you remember having a conversation with Fritz von Opel regarding a falcon? A. No.

Q. Would you say that you did or did not have any such conversation? A. I would be very much surprised
1861 if I had that conversation about a falcon.

Q. Do you recall showing Mr. von Opel a picture of Mrs. von Opel which was taken from the society page of a newspaper, in which picture she had a falcon on her arm? A. No.

Q. You do not recall such a conversation? A. No.

Q. Do you recall saying, during that conversation, that it was dangerous for Mrs. von Opel to appear in a picture with a falcon, because Goering was so well known for his falcon hunting? A. No.

Q. You do not recall any such conversation? A. No.

Q. In 1941 you do not recall any such conversation? A. No.

Q. Was it during this conversation with the F. B. I. in January, 1942, that you first told them about the stock of Uebersee being owned by a South American corporation? A. I don't recall the details of the conversation.

Q. Do you recall at any time making a statement to the F. B. I. about the South American ownership of Uebersee stock? A. I don't recall it specifically, but I dare say I did.

1862 Q. Well, will you tell us, to the best of your ability at this time, what it was you told those two F. B. I. agents in January, 1942? A. I don't recall specifically what I told them. I explained the first interval, proving that I myself was not a German.

Q. Anything else? A. They asked me many questions. I don't recall the details of the questions.

Q. So you are unable to elaborate upon that conference in any way? A. That is right.

Q. Do you have any recollection of telling the F. B. I. agents anything about Fritz von Opel's connection with rockets? A. I don't recall it on that occasion no.

Q. Do you recall telling them that on any occasion? A. I recall commenting on it, yes.

Q. Commenting on it to whom? A. I couldn't tell you whether it was Alien Property Custodian, or friends, or who, or family.

Q. Do you recall what it was you told them? A. I am sure that I engaged in conversation at one time or another during the course of the war about Mr. Seversky's article on Fritz von Opel as the inventor of the rocket, which was published in the New York Times and was
1863 widely talked about in Nashville.

Q. Do you recall what year that was—the Seversky article? A. I think it was in 1943, but I would not be sure of it.

Q. And wasn't the gist of that article that Mr. von Opel had given Seversky, the Russian designer, all the information which he had about the rocket?

Mr. Burling: If Your Honor please, I object to testimony concerning what an article says about von Opel. It would have no bearing—

The Court: I suppose you are trying to connect it up with some testimony his son gave. Why don't you ask him that direct question?

By Mr. Ingoldsby:

Q. You heard your son's testimony the other day? A. Yes.

Q. My question is, Did you receive any information from your son about Fritz von Opel and the rockets? A. Yes. He told me the story of this conversation that evening.

Q. You remember that very distinctly? A. That is right.

Q. Is there anything that makes you remember 1864 that so distinctly? A. I don't know what caused me to remember it so distinctly, no.

Q. I want to ask you about your testimony this morning in which you alluded to the year 1938. Will you tell us again just what it was that Fritz von Opel told you about how the Uebersee shares were held by Swiss? A. He told me that the Uebersee's shares were sold to Swiss owners and that the Swiss owners endorsed the stock certificates in blank, and they were returned to the Opels.

Q. Are you sure that he told you that? A. I am positive.

Q. You could not be mistaken about that? A. I could not.

Q. Are you aware of the fact that the Uebersee's shares are bearer shares? A. No.

Q. You did not know that? A. No.

Q. You appreciate, of course, that bearer shares can not be endorsed in blank, isn't that correct, or endorsed at all? A. I don't know about the Swiss laws.

Q. Now, will you tell us again what it was that Mr. von Opel said about your acquiring Swiss citizenship?

A. He pointed out to me the great difference in in- 1865 come tax that I was paying as contrasted with himself, and the rate of difference of many Americans who had formed foreign holding companies and put their stock in those holding companies.

Q. And what was his suggestion to you? A. His suggestion to me— He said that a change had taken place in the regulations in regard to it and that Americans were denied that right or privilege now, but that by acquiring Swiss citizenship I could enjoy those emoluments.

Q. And did you think that he was making a serious suggestion? A. I didn't really know.

Q. Weren't you sure that he was not? A. It certainly was not serious to me—giving up my American citizenship.

Q. Well, weren't you certain that he was not serious if he made such a suggestion? A. No, I was not.

Q. Are you aware of how long it takes to become a Swiss citizen? A. No, sir.

Q. And, of course, the fact is that you would not save any income taxes, anyway, would you? A. I think you would.

Q. Would you? Well, I will leave that open.

I wanted to ask you about your meeting with Mr.

1866 von Opel in Savannah—

The Court: Are you going to be some time on that?

Mr. Ingoldsby: Yes.

The Court: We will go over until 10 in the morning.

(At 4:15 p.m. an adjournment was taken until Tuesday, January 4, 1949, at 10 a.m.)

1869 PROCEEDINGS

Mr. Ingoldsby: May I proceed, Your Honor?

The Court: Yes.

Thereupon—JOHN MASON HOUGHLAND resumed the stand and, having been previously duly sworn, testified further as follows:

Cross Examination (resumed)

By Mr. Ingoldsby:

Q. Mr. Houghland, I believe that when we recessed yesterday I had asked you whether, in view of your statements, you knew or understood that Wilhelm von Opel was

the owner of Spur stock, or that you knew or understood that Frankenberg was the father's financial agent. I had asked you the question whether you ever received any authorization to permit Fritz to act, and I believe your answer to that question was that you had not received any written authorization. Is that correct? A. To permit Fritz to act?

Q. Yes. A. Yes, in the case of the contract giving me a call on the stock, I believe we were provided with a power of attorney for Fritz to sign for Uebersee.

Q. I see. And the power of attorney was from the
1870 Uebersee Korporation and not from the father?
A. Yes.

Q. Now, you stated in your testimony yesterday, did you not, that you had given the Government representatives at one or another all of the information which you possessed pertaining to Fritz von Opel? A. I think so; I certainly tried to, at least.

Q. Do you recall whether or not you told them anything about a meeting which you had in New York with Fritz von Opel and some other people in the summer of 1941? A. I don't recall.

Q. Do you recall such a meeting? A. Yes.

Q. What was the purpose of that meeting? A. It was a directors' meeting, I believe.

Q. Did you meet him at any place in New York other than at the directors' meeting in the summer of 1941? A. Yes; he came up to my hotel room at the St. Regis Hotel.

Q. Who was present there? A. The two of us were alone there for most of the period. Mr. Hines finally came and walked through the room but did not stay.

Q. Do you recall meeting with Mr. von Opel on that occasion at all in the offices of Bayer & Clauson?
1871 A. That was where the directors met.

Q. Was that the occasion when Mr. von Opel censured you severely for reporting that he traveled on a Liechtenstein passport and that his family owned ex-

tensive holdings in Germany? A. As I recall it, that was the occasion at the hotel, but I think there was some of it at the meeting. But the main, frank discussion between the two of us was, I believe, at the St. Regis Hotel.

Q. You don't deny that at least a substantial portion of that discussion took place in the presence of Mr. Bayer? A. I don't recall Mr. Bayer—it being in his presence.

Q. You don't recall any discussion of it in his presence? A. No.

Q. Did you report that meeting to representatives of the Government? A. I don't recall.

Q. Do you recall whether or not you told Mr. von Opel on that occasion that it was merely an oversight and that Hines was responsible for it, and not you? A. I did not make that statement.

Q. You did not? A. No. I told Mr. von Opel that I would accept responsibility for it.

1872 Q. But you also told him that you had not done it, didn't you? A. Yes.

Q. You told him that you didn't know about it? A. I did not tell him that. I didn't know about it. I told him that I had not done it but that I took responsibility.

He said, "I am sure you would not have done it."

I said, "Fritz, I am president of the company. There was nothing wrong in it. We reported what the Government asked us to report. I accept full responsibility for it."

Q. Did you have another meeting with Mr. von Opel in New York that year? A. No.

Q. When did you discuss your second seven-year contract? A. In 1940.

Q. That was when the second seven-year contract came up? A. It wasn't a seven-year contract. Both contracts were eight-year contracts, but the first one was retroactive for the year 1933.

Q. Did you have a discussion of that contract? A. I don't recall.

Q. Do you recall in 1941 having a discussion about a seven-year contract and the excess profits tax that related to it? A. No, I don't recall. As a matter of fact,
1873 the second contract had already been written by that time, as I think it was written preceding 1941 —1940.

Q. Did you talk to Mr. von Opel about a change in that contract? A. I think so.

Q. Do you recall what that discussion related to? A. I don't recall whether I talked to Mr. von Opel or whether I talked to—or Mr. Ulrich; but the auditors talked to me about changing the contract so that my profit participation would—that is, the management contract—that my profit participation would be before tax.

Q. Who was it that wanted the change in the contract? A. I did.

Q. It made quite a substantial difference to you as to whether or not you received that change in the contract? A. It would have made a substantial difference to me, yes.

Q. Would you describe what your profit participation was under that contract? A. It was 5 per cent after 12-1/2 per cent had been earned on capital and surplus combined.

Q. Are you sure that that is correct? A. Well, it is reasonably so; I don't have the contract before me.
1874 Q. Isn't it correct that your contract was that you were to get 5 per cent after 7 per cent was earned on the capital stock? A. I think 7 per cent was on the other contract, on the contract which had payable the $200,000 which was given me in consideration of relinquishing my rights to the stock.

Q. When was the second seven-year contract—or eight-year contract—entered into? A. It was an eight-year contract, and it terminated just eight years ago December 31. I don't remember the date, but it lasted for eight years.

Q. You did not receive the change in contract that you requested, did you? A. No.

Q. Who turned that down? A. I don't know.

Q. Whom did you discuss it with? A. With Bayer & Clauson. They discussed it with me. They originated the idea and brought it to me; that it would not make a substantial difference to the company; that the taxes had greatly increased since I had written the original contract or had signed the original contract; and that they thought, under the circumstances, I should be entitled to a contract which would take that into consideration.

Q. I want to ask you a question about Mr. von
1875 Opel. Will you state the names of all the people that you have talked to concerning Fritz von Opel's deportation? A. I couldn't answer that question completely; I don't know. I doubtless have talked to many people on that subject.

Q. Will you give us the names of any people that you have ever talked to about this? A. Well, I talked to Mr. Jones—I don't know his first name—who is a lawyer in the Department of Justice. I made inquiry of everybody I knew in the Alien Property Custodian's office.

Mr. Burling: His name is Harry Leroy Jones, Mr. Ingoldsby.

By Mr. Ingoldsby:

Q. What inquiry do you mean? A. Well, was he going to be deported?

Q. Whom else did you talk to? A. I can't recall whom else; I doubtless have talked to a number of people about it.

Q. Did you talk to Senator McKellar about it? A. No, I don't think—I don't recall having talked to him about deportation.

Q. Are you sure about that? A. I am not sure; I just don't recall it.

Q. Would you say that you took or made active
1876 efforts to effect the deportation of Fritz von Opel?

A. I would say that I would have been glad to have

made active efforts, but I know of no way I could have effected it.

Q. The question is, Did you? A. No.

Q. I want to return for a moment to your meeting with Mr. von Opel at Savannah, Georgia, in January, 1941. Do you recall stating that Mr. von Opel had come from New York to attend that meeting? A. No.

Q. You don't recall that? A. No.

Q. Do you recall the circumstances under which that meeting was arranged? A. Yes. I wrote Mr. von Opel, I think, at Palm Beach.

Q. You wrote him? A. I think so.

Q. Or did you call him? A. I think I wrote him.

Q. I believe it was your testimony that at this meeting Mr. von Opel told you that the Germans were foresighted people and that if the United States entered the war against Germany and attempted to seize his or his father's property in the United States, it would be discovered to be
1877 in the names of Swiss owners; and that if the Swiss became involved, it would be found that the owners of the Uebersee stock would be a separate corporation not under your company? A. Yes.

Q. Is that correct? A. That is correct.

Q. It is your testimony at present that that is what Mr. von Opel told you, is it? A. Yes.

Q. Are you aware of the fact that in November, 1941, which was just one month before the United States and Germany entered the war, Fritz von Opel transferred the Uebersee stock out of the names of the Swiss and into his own name? A. No.

Q. You never heard that? A. I have heard some comment about it here at this trial, but I didn't know about it.

Q. You didn't know about it before that? A. No.

Mr. Burling: Nor is it a fact, if the Court please.

Mr. Ingoldsby: Do you want to testify, Mr. Burling?

Mr. Burling: I object to counsel's making statements of what the fact is.

The Court: The question has been answered.

By Mr. Ingoldsby:

1878 Q. In 1938; Was it 1948 that you went to see Frankenberg in New York? A. 1937.

Q. How many times did you see Frankenberg, all told? A. I have seen him three times: once, the last time, at this trial; once in New York in the summer of 1941; and on the occasion in 1937.

Q. In 1937, when you went to see Frankenberg in New York, I believe it was your testimony that you wanted an increase in capital in order to operate some of these small companies; is that correct? A. Yes; to develop that type of operation.

Q. Mr. Frankenberg, you stated, turned that down; is that correct? A. That is correct.

Q. Did you on that occasion make any efforts to take the matter up with Wilhelm von Opel? A. No.

Q. In 1939, when Fritz von Opel advised you that Uebersee's investors were interested in selling, you were very much interested in either their retaining control temporarily or in getting control into hands friendly to you, were you not? A. Yes.

Q. Therefore, at that time you were opposed to
1879 the sale, were you not? A. No.

Q. You were opposed to the sale generally in that you knew where the stock was going to go? A. No; I was apprehensive lest my call on the stock might be ignored.

Q. In connection with the call upon the stock and your apprehension with respect to that, did you contact Frankenberg? A. I cabled him; yes.

Q. You cabled him in Zurich? A. Yes.

Q. You also cabled Gaeng? A. I cabled Gaeng.

Q. Did you cable them as representatives of Uebersee? Is that correct? A. Yes.

Q. Or did you contact them as nominees of the stock?

A. I don't know what. I cabled everybody I thought might be involved.

Q. Did you cable Wilhelm von Opel on that occasion? A. No.

Q. Did you make any efforts to get in touch with him? A. No.

Q. In January, 1941, you urged a change in your contract in order to care for the excess profit feature, 1880 did you not? You just testified to that this morning.

The summer of 1941, not January. A. I don't recall what you are talking about—an excess profit—

Q. I am talking about the change that you requested in your contract as a result of the excess profits tax. A. It had nothing to do with excess profits.

Q. What did it have to do with? A. It had to do with my participation occurring before tax.

Q. What tax? A. Any general tax.

Q. What tax? A. Income tax.

Q. What tax in particular were you concerned with? A. Any tax.

Q. Had the income tax for corporations changed particularly at that time? A. No.

Q. But the excess profits tax had come into effect, hadn't it? A. Well, I am sure the income tax was involved. I mean it was just a case of participation before tax, that is all, rather than after tax.

Q. Wasn't the thing that brought that matter to a 1881 head and required your bringing up the question the fact that the excess profits tax had come into being and had made a substantial difference in the income which you would receive, whether your participation was figured before or after the tax? A. I don't recall the relationship of the excess profits tax. I don't disclaim it; it is perfectly possible and sounds reasonable.

Q. Isn't that a fact: that that is exactly what it was: that the excess profits tax was the one that was the real

heavy tax and made the most or the substantial difference to you? A. I should think so, yes.

Q. And it did make a substantial difference to you, didn't it? A. Yes; I should think it would.

Q. You didn't get the change in the contract that you wanted, did you? A. No.

Q. On that occasion, did you take the matter up with Frankenberg or with Wilhelm von Opel? A. No. The matter was handled through Bayer & Clauson. They handled it.

Q. Was there ever any occasion when you did take anything up on your own initiative with Frankenberg
1882 or with Wilhelm von Opel? A. I can't say there was any with Wilhelm von Opel. As to Dr. Frankenberg, I think there was, yes, in the case of directions as to dividends, and general business matters of that sort.

Q. You did receive directions from Frankenberg as to dividends? A. Yes.

Q. Did you receive those in writing? A. I am sure we did; he didn't call me.

Q. Did that follow a general pattern, or was it occasional? Tell us something about it. A. There were several instances when the regular routine of dividend distribution was interrupted on order; and, as I recall it, we received our instructions in those matters from Dr. Frankenberg.

At one time dividends were paid at Adler & Company; and there were several changes where dividends went. One time they were paid to a bank in New York, as I recall, and I think our instructions came from Dr. Frankenberg. I am pretty sure they did.

Q. Are you sure about that? A. No, I wouldn't make oath to it, but that is my recollection.

Q. Do you know whether that was during the
1883 period of time when the stock of Uebersee was held by the Adler Bank? A. I don't know; I couldn't say.

Q. You could not say definitely whether or not you did receive any written instructions from Frankenberg; is that

correct? A. I could not say definitely, but I feel sure I did, because we got our instructions from him on the changing of dividend payments.

Q. Did you ever, under any circumstances, receive any instructions from Wilhelm von Opel? A. No.

Q. Mr. Houghland, you consider yourself a reasonable man, don't you? A. Well, I guess we all do, yes.

Q. You are certainly of at least average intelligence, aren't you? A. Thank you.

Q. You agree with that, don't you? A. I think so. I think we all do.

Q. You are aware, are you not, that if Wilhelm von Opel were the true owner of Spur stock in 1939 and had failed to report that fact to the German Government, he would have been subject to very severe penalty? Are you aware of that fact? A. No. I am not familiar with German law.

1884 Q. You are generally familiar with foreign currency regulations, are you not? A. No, I am not—definitely not.

Q. I will ask you to assume that fact. Under those circumstances, would you, if you were in Fritz von Opel's position, or if Wilhelm von Opel were your father, would you have made such statements as you attribute to Fritz von Opel over the trans-Atlantic telephone in 1939? A. He made them under oath in Federal Court in New York.

Q. My question is, Would you? A. Not if I thought it would kill my father; I certainly would not.

Mr. Ingoldsby: That is all.

Redirect Examination

By Mr. Burling:

Q. You testified, I believe, on cross examination, Mr. Houghland, that you endeavored to acquire from the Cus-

todian for your interests those interests which the Opels had formerly held; is that correct? A. That is correct. I endeavored to acquire it not personally, but I endeavored to get it out of German hands.

Q. Will you state whether prior to the vesting by the Custodian of the Opel interests you had found it helpful or unhelpful to the Spur business to have German in-
1885 terests in the business? A. It was disastrous.

Q. Will you explain that, please? A. Well, when the freezing order took place, the Government said, or the Treasury said—they just blocked our mail box and sealed it with a public notice there; and then they sent a man who sat at our front door at a desk and interrogated everybody that came into the office; and another man who countersigned every check we had. This was after we had received a license to operate and lasted for a period of slightly over a year—thirteen months, as I recall it.

We were constantly under attack from competitors as to being a German-owned company. Even then, before war was declared, the feeling was very tense, and all this regulation and freezing was disastrous for a retail operation largely operating in the South.

Q. Will you state what action, if any, your competitors took with respect to the German interests in your firm? A. They advertised in the newspapers: "Don't trade with German or foreign-owned chain stations" and attacked us vigorously and repeatedly by newspaper ads.

Q. Will you state whether or not you had any personal financial interest in Spur Distributing at the time you are speaking of? A. Yes, I did.

1886 Q. Approximately what was your personal stock in that? A. You mean in money or stock?

Q. In dollars. A. That would be very hard for me to just be sure about it, but I should say, in the condition the company was in, $200,000 perhaps.

Q. Did that represent substantially all of your personal fortune? A. Yes.

Q. In other words, you had yourself invested your entire personal fortune in this corporation; is that correct? A. That is right.

Q. Will you state whether or not you found it helpful or unhelpful to have the stock vested and have it known that the majority of the stock was held by the Alien Property Custodian? A. Unhelpful.

Q. Will you state whether or not you had any motive for desiring to obtain all of that stock and placing it in the hands of American citizens? A. I did, yes, sir.

Q. Will you describe that motive? A. My motive was to free the company from the taint of German ownership, which was a very difficult thing to carry on with the
1887 situation as it was.

Q. That is why you took the steps you described yesterday to obtain all of the stock either for your hands or the hands of fellow American citizens? A. Yes.

Q. You were asked concerning a report which was made by Spur to the United States Treasury.

Mr. Burling: May I have that, please?

Mr. Ingoldsby: I do not believe it was marked (handing a paper to Mr. Burling).

By Mr. Burling:

Q. I believe you were asked about a report which was filed, an application for license which was filed, by Spur Distributing; is that correct? A. Yes.

Q. Will you state whether or not you personally prepared that report? A. I did not.

Q. Did you see it at any time prior to its being filed with the Treasury? A. No.

Q. When did you see it for the first time? A. The first time I ever saw the report was after I had seen Fritz in

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Vol. III

TRANSCRIPT OF RECORD

(Pages 1217 to 1802)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 178

UEBERSEE FINANZ-KORPORATION, A. G.,
PETITIONER,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL AND AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JULY 7, 1951.

CERTIORARI GRANTED OCTOBER 15, 1951.

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,464

UEBERSEE FINANZ-KORPORATION, A. G.,

Appellant,

—against—

J. HOWARD McGRATH, Attorney General and as successor to the Alien Property Custodian,

Appellee.

Appeal from the District Court of the United States for the District of Columbia.

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New York in 1941, when Fritz was so indignant about the report.

1888 Q. Did he ask you to take any action in connection with any person who had in fact prepared the report? A. Yes. He was very irate about Henry Hines and wanted to have him left off the service of the company.

Q. Will you state why he was angry at Henry Hines? A. On account of Henry's having filed this report.

Q. You had not seen the report before that time? A. No.

Q. But you took responsibility for it; is that correct? A. I did, yes.

Q. Now, you testified yesterday that you did not regard Fritz von Opel as being a bona fide Liechtensteinean citizen; is that correct? A. That is right.

Q. Will you explain to the Court why you did not regard him as such?

Mr. Ingoldsby: I object.

Mr Burling: I am merely asking about a question which my friend brought out on his own cross examination.

Mr. Ingoldsby: I was asking him as to what was stated in a report.

Mr. Burling: No. If Your Honor please, Mr. Ingoldsby also asked him if he did not report Fritz von Opel as a bona fide Liechtensteinean citizen.

The Court: Well, I have an impression he did.

1889 That is my impression. He asked him, and he said he did not.

Mr. Ingoldsby: I believe that is right.

The Court: I suppose his reason might have some bearing on his view. It is not binding on me, of course.

By the Court:

Q. You may answer, Mr. Houghland. A. No. You asked me why I did not regard him as one?

By Mr. Burling:

Q. That is correct. A. He told me a story of his capture at Gibraltar and of how he fooled the English with his Liechtenstein passport; and I actually did not at that time know that when you had a passport, you had citizenship; and Fritz made no reference to Liechtenstein citizenship; and the German arms were quite triumphant at that time, and he seemed to be thoroughly enthusiastic about the German effort. I had no idea of Fritz taking Liechtenstein citizenship sincerely. I didn't know that a passport meant citizenship.

Mr. Burling: That is all.

Recross Examination

By Mr. Ingoldsby:

Q. This particular report, which has not been marked or offered, is not the report which Mr. von Opel became so indignant about, is it? A. I thought it was; I
1890 don't know.

Q. Well, look it over and see if it refreshes your recollection.

Mr. Burling: If Your Honor please, I asked for the document from counsel. I did not see it yesterday.

Mr. Gallagher: It was not here.

By the Court:

Q. Let us find out, if you can tell, whether it is the one he was indignant about. A. I don't believe this report is, no.

By Mr. Ingoldsby:

Q. The report that Mr. von Opel was talking about was filed prior to the summer of 1941, wasn't it? A. I think so. I believe it was in the summer of 1941.

Q. In the summer? A. Yes.

Q. But it was filed prior to the time you and Mr. von Opel met in New York, wasn't it? A. Yes.

Q. That was the report? A. Application for license; just like that.

Q. It was stated in that report that Mr. von Opel traveled on a Liechtenstein passport? A. Yes.

1891 Q. The reason for the difficulty or for the indignance of Mr. von Opel was that he felt the company should have reported that he was a Liechtenstein citizen rather than make the statement that he traveled on a Liechtenstein passport? Wasn't that what the argument was about at the company? A. I never thoroughly did understand what his objection to the matter was.

Q. You did not understand? A. Not thoroughly.

Q. Did I understand you to state that even before the United States entered the war, this German ownership had become harmful to the business of Spur? A. Yes; after the freezing took place, it became harmful.

Q. When did the freezing take place? A. It took place in June, 1941.

Q. Isn't it a fact that the most profitable year that Spur ever enjoyed in the long history of the company was the year 1941? A. Yes.

Q. And the reason, for the most part, for the loss following 1941 was the general, overall gasoline shortage; isn't that correct? A. I would say that was the substantial reason, yes.

1892 Q. Now, you say that your motive at that time was to free the company from German ownership. By "at that time" I am talking about, or I assume you were talking about, the time immediately preceding the entry of

the United States into the war; is that correct? A. I was talking about the whole period.

Q. Of the whole period? A. The war.

Q. As a matter of fact, you were interested in freedom from the Fritz von Opel control or ownership even prior to that, weren't you? A. I don't recall; no. I am sure I would have preferred a different ownership than a German ownership, if that is what you are asking.

Q. That is my question. That was true even prior to the date— A. I think it would have been true from the day they entered it.

Q. German ownership, if it existed today, would not interfere with the operation of your business substantially, would it? A. I think it would interfere tremendously.

Q. Why? Today? A. I think so. Do you?

Q. No, I don't. I would like to know why you 1893 think so.

The Court: I do not think that makes much difference.

Mr. Ingoldsby: I do not believe this has been marked. Will you mark that, please, Mr. Clerk?

Do you have any objection to that Treasury report?

Mr. Gallagher: It is the one he testified yesterday he approved after Hines had filed it.

Mr. Burling: No objection.

(The Treasury report referred to was marked as Plaintiff's Exhibit 173 and received in evidence.)

Mr. Ingoldsby: That is all.

(The witness left the stand.)

Mr. Baum: We will call Mr. Butler P. Crittenden.

Thereupon—BUTLER PARNELL CRITTENDEN was called as a witness and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Baum:

Q. What is your full name, Mr. Crittenden? A. Butler Parnell Crittenden.

Q. Where do you reside, Mr. Crittenden? A. In Southbury, Connecticut.

Q. When were you born? A. November 8, 1889.

1894 Q. Where? A. In Rochester, New York.

Q. Will you state briefly for us your education? A. I was educated in the public schools of Rochester and attended Massachusetts Institute of Technology, where I was graduated as a mechanical engineer with a bachelor of science degree.

Q. Subsequent to your graduation from Massachusetts Institute of Technology, what has been your major occupation through the years? A. The engineering phase in the oil business.

Q. About how long have you been engaged in oil engineering or petroleum engineering? A. From 1920 to 1940.

Q. What did you do in 1940? A. In 1940 I took a position with Leonard Construction Company and the Civil Engineer Corps of the Navy in the construction of a fuel oil depot at Newport, Rhode Island.

Q. What is your present occupation, Mr. Crittenden? A. I am mechanical engineer with the firm of Westcott & Mapes, in New Haven.

Q. Did you ever do business under the name of Crittenden Engineering Company? A. Yes.

1895 Q. When was that company organized? A. In 1931.

Q. Where were your office located? A. At 420 Lexington Avenue, New York.

Q. Directing your attention to the year 1932, did you meet a man by the name of John Cole? A. Yes.

Q. Where did you meet him? A. In my office.

Q. Approximately when during the year 1932? A. Well, I would say early in the year 1932.

Q. What happened at this meeting with Mr. Cole? A. Mr. Cole called at my office and stated—

Mr. Ingoldsby: I object. I do not know what this is all about, but it seems to me like hearsay, if Mr. Cole is going to make some statement.

Mr. Baum: Mr. Cole acted as, at least, subagent for Mr. Hoffacker. Mr. Cole is the man who acquired the Spur stock, and Mr. Cole was the instrumentality in the enterprise we are coming to in Louisiana, which was also an asset of Uebersee.

The Court: You are going to connect it?

Mr. Baum: Yes; in fact, I think the answer will disclose that.

The Court: You could not connect him up as 1896 agent by what he says. Are you going to connect him up with intermediate proof?

Mr. Baum: I believe the proof of Mr. Cole's activities is already in the record, Your Honor.

Mr. Ingoldsby: I do not believe so.

The Court: You will have to refresh my recollection on that. The rule is that what an agent states is admissible; but you can't prove agency by what an alleged agent states; you have to prove it independently. If you can connect it up, I will permit it.

Mr. Baum: I will pass that. I think I can continue.

By Mr. Baum:

Q. You had this meeting with Mr. Cole. We won't go into what was said, at this point. Thereafter, did you have another meeting with Mr. Cole? A. Yes.

Q. Was anyone else with Mr. Cole at that meeting? A. Theodore Hoffacker.

Q. This meeting was held about how long after the first meeting with Mr. Cole? A. My memory is shortly after.

Q. Where? A. In the same office.

Q. In your office? A. Yes.

1897 Q. Did Mr. Hoffacker have any conversation with you at this meeting? A. Yes.

Q. Will you tell us what he said? A. He stated he was an agent acting in behalf of considerable, extended foreign funds, and that he was advisory and was looking around for potential investments in the oil business.

Q. Did Mr. Hoffacker make any reference to the source of the funds he referred to? A. Yes.

Q. What did he say? A. He said that he was agent for and adviser to Fritz von Opel, the son of Opel the automobile manufacturer in Germany, who had sold that company to General Motors.

Q. I ask you again, Did he say anything about what the source of the funds was?

Mr. Ingoldsby: Just a second. I object. I think that question has just been answered.

The Court: Well, he may amplify it, if there is anything further.

The Witness: Not beyond the fact that those funds were derived from the sale of the Opel Motor Works in Germany.

By Mr. Baum:

1898 Q. Did Hoffacker state what his purpose was in coming to see you? A. Yes.

Q. Will you tell us what he stated? A. He stated that Mr. Cole had related to him our opinions on opportunities for investing money in the oil business and that he was greatly interested, and he suggested that we make a survey.

Q. Did Mr. Hoffacker ask you to do anything? A. Yes.
Q. What did he ask you to do?

Mr. Ingoldsby: When was this, please?

Mr. Baum: It has been identified, if Your Honor please, as shortly after the first meeting with Mr. Cole, which was early in the year 1932.

By Mr. Baum:

Q. Now, I believe the question is, What did Mr. Hoffacker ask you to do? A. Mr. Hoffacker asked us to furnish him an estimate of the cost of making a survey of purchasable crude oil producing properties in the Southwest and crude oil refining properties in the Southwest.

Q. Going back for a moment to your conversation with Mr. Hoffacker about those funds, did he say whose funds they were?

1899 Mr. Ingoldsby: Just a second. I think three attempts have been made at that, Your Honor, and three times the answer has been made. I object.

The Court: I will permit him to answer. I will do that.

Mr. Ingoldsby: May the conversation be placed, then, as to time and date?

Mr. Baum: It has been placed three times, if Your Honor please. It is the same conversation.

The Court: You can straighten it out on cross examination, if you wish. He may answer.

The Witness: Yes. He described the funds as funds derived from the sale of the Opel Motor Works in Germany, entrusted to the son of the owner, Fritz von Opel, and that he was an agent for Fritz von Opel and guided him solely in all of his investments in the United States.

By Mr. Baum:

Q. You just said funds entrusted to Wilhelm von Opel? A. No, I didn't say that; funds entrusted to the son by the father.

Q. Was the father's name mentioned? A. At that meeting, I wouldn't remember. It was subsequently, but it was always the owner of the Opel Motor Works.

Q. Going back to this report which you said Mr. 1900 Hoffacker asked you to prepare—or to the survey—

A. Yes, sir.

Q. (Continuing) did you then undertake to prepare a survey? A. We did.

Q. Were you paid for undertaking that? A. Yes.

Q. What was your fee? A. As I remember, we asked for and were paid—it was either $12,500 or $15,000.

Q. Who paid you that sum? A. Theodore Hoffacker, agent.

Q. When you say, "we", do you mean the Crittenden Engineering Company? A. Crittenden Engineering.

Q. Some time thereafter you completed your survey; is that correct? A. That is correct.

Q. You submitted it to whom? A. Theodore Hoffacker.

Q. Will you tell us what happened after you submitted your survey or report? A. The report specifically recommended opportunities for acquiring crude oil producing properties and also a list of small crude oil refining properties.

1901 Shortly after the opportunity looked so favorable, there came under consideration a very much larger investment syndicate business proposition that had been discussed previously. Involved in that syndicate would have been, had it worked out, Theodore Hoffacker, Fritz von Opel, and several Chicago investors.

Q. About when was this consideration of the syndicate you have referred to? A. Very early in 1933.

Q. At the time this syndicate was under discussion, did you receive any further information about the funds which were to be invested? A. Yes.

Mr. Ingoldsby: I object. I think he should identify the source of the further information.

Mr. Baum: First, he has to show if he did receive any.
The Court: He can answer yes or no and tell.
The Witness: Yes.

By Mr. Baum:

Q. From whom did you receive such information? A. The Crittenden Engineering Company employed agencies, first, to learn more about Theodore Hoffacker; and secondly, as to the ownership of the funds that Hoffacker had stated were in this country.

1902 Q. At this time did Mr. Hoffacker say anything to you about the funds? A. Mr. Hoffacker never deviated from the fact that the funds were funds derived from the sale of the Opel Motor Works and entrusted to the son, Fritz von Opel, by his father, and that he was agent.

Q. Did you ever hear the expression "usufruct contract"? A. Yes.

Q. When did you hear that expression? A. Some time later. Some time later, after these business undertakings were created; and then I heard it directly from Fritz von Opel himself on the trip I made to Germany.

Q. What happened to this proposal for a syndicate? A. The Chicago group decided that they would not participate.

Q. So the matter was dropped? A. Yes.

Q. At or about that time did you become—

The Court: Are you going to leave out what was said on this trip to Germany?

Mr. Baum: Yes. Do you wish me to do it now?

The Court: No.

Mr. Baum: All right.

1903 By Mr. Baum:

Q. At or about this time that the syndicate proposition fell through, did you become associated with a

corporation known as Oil Refineries, Incorporated? A. After the decision that the syndicate operation would not be carried on, Hoffacker elected and instructed us to submit to him a management contract pertaining solely to the operation of crude oil refining properties which were available. That contract was written between Theodore Hoffacker, agent, and Crittenden Engineering Company, and provision of salaries, earnings participation, and so forth, were set forth.

Q. I believe I asked you about Oil Refineries, Incorporated? A. Correct.

Q. Did you ever become associated with such a corporation? A. Yes.

Q. Will you tell us when? A. In 1933 a company was formed, as I recall it, by the Corporation Trust Company, and later—very shortly later—that was a Delaware corporation, and it was reformed in Louisiana as a Louisiana corporation.

Q. And it had its office where? A. In Shreveport, Louisiana.

1904 Q. What was the business of Oil Refineries, Incorporated? A. Under its charter, an overall business; but essentially that of purchasing and refining crude and the sale of refined products.

Q. Did the corporation own a refinery? A. Yes, it purchased one.

Q. It did? A. At Overton, Texas.

Q. Who were the officers of this corporation? A. Theodore Hoffacker, as I recall it, was president; I was a vice president; Martin J. Grogan was a vice president.

Q. Where did the corporation get the funds to buy this refinery? A. Theodore Hoffacker, agent.

Q. How much money was invested in the corporation? A. As I recall it, 125—somewhere between $90,000 and $150,000. May I state this all occurred in 1933? This was 15 or 16 years ago. I have no records. If I hesitate, it is to try to recollect.

Q. Was there any relationship between Oil Refineries and Crittenden Engineering Company? A. Yes.

Q. Will you please tell the Court what that rela-
1905 tionship was? A. A management contract in which Crittenden Engineering undertook to manage—purchase, manage, and consummate the sales of refined products for the corporation Oil Refineries, Incorporated.

Q. In the year 1933 did you become associated with a corporation known as Oil Production, Incorporated? A. Yes.

Q. Will you state who the officers of that corporation were? A. The same individuals, Theodore Hoffacker, Crittenden, and Grogan.

Q. Was that corporation formed in the year 1933? A. I would say yes, late in—very late in 1933 or perhaps early in 1934.

Q. Will you tell us what was the business of Oil Production, Incorporated? A. The purchase and operation of crude oil producing properties.

Q. When you say "crude oil producing properties," do you mean oil wells? A. Yes.

Q. Was there any relationship between this corporation and Crittenden Engineering Company? A. There was.

It—Crittenden Engineering—had a management
1906 contract.

Q. Did this corporation purchase crude oil from those properties? A. It did.

Q. How much was invested in the purchase of such properties? A. Well, from first to last, in round figures, I think between $400,000 and $500,000.

Q. Where did those funds come from? A. There was a change in the financing. Those funds came from—bonds were issued in the name of Oil Production, Incorporated, and purchased by the Uebersee Finanz-Korporation—bonds issued in the exact amount of the expenditure.

Q. The offices of Oil Production were located where? A. In Shreveport, Louisiana.

Q. At the time those corporations were organized, had you met Fritz von Opel? A. At the time those corporations were organized? Yes, I think I met Fritz von Opel in the period between the formation of Oil Refineries, Incorporated, and Oil Production, Incorporated.

Q. Where did you meet Fritz von Opel? A. My recollection is that my first meeting with him was either at Theodore Hoffacker's home in Scarsdale or with
1907 Theodore Hoffacker in Shreveport, at our offices there.

Q. In Shreveport? A. Yes, sir.

Q. In other words, he was introduced to you by Theodore Hoffacker? A. Yes.

Q. Do you remember what Theodore Hoffacker said at the time he introduced Mr. von Opel to you? A. Not particularly, no.

Q. Now, some time after this meeting with Fritz von Opel and the formation of these corporations, did there come a time when you were considering selling some of the assets of Oil Production, Incorporated? A. Yes, we were asked to.

Q. Who asked you to? A. Theodore Hoffacker.

Q. Will you tell us under what circumstances and when he asked you to do that? A. He stated that Fritz von Opel's father had become involved with the Nazis in some way or another and needed funds, and could we contribute funds. We asked him how much, and he outlined a round figure of a hundred thousand.

Q. When was this? Was this a conversation with Mr. Hoffacker? A. Yes.

1908 Q. When did this take place? A. Well, I would think in 1934 or 1935. I know that we had purchased several leases and operated them. I therefore think it was probably in 1935.

Q. You stated that Mr. Hoffacker asked you to raise some money. What did you reply to him on that occasion? A. We told him that we would, as I recall it—the only

way we would have of raising funds would be the sale of a crude oil producing lease.

Q. Did you thereafter sell one of the leases? A. Yes.

Q. About how much money was raised by that sale? A. Well, I think we recovered the cash expenditure on the lease and assigned obligations and made some—perhaps $150,000, I think, or thereabouts. I don't remember the exact sum.

Q. Do you recall where that money was transmitted? A. Well, it was transmitted to the bank in New York and exchanged for bonds.

Q. Exchanged for bonds which were surrendered? A. Redeemed bonds.

Q. Do you remember the name of that bank? A. No, I don't.

Q. Did you ever have occasion to meet Mr. Fritz
1909 von Opel in Montreal, Canada? A. Yes.

Q. Will you tell us approximately when that occurred? A. Oh, I have got to project the thing. Maybe 1935 or 1936. In the summer of 1936.

Q. Under what circumstances did you go to Montreal? A. Mr. Hoffacker requested that I go with him and Walter Bayer to Montreal to meet Dr. Hans Frankenberg and Mr. Fritz von Opel.

Q. Where did you go in Montreal when you arrived there? A. Well, as I recall it, the Windsor Hotel.

Q. Did you meet Mr. Frankenberg? A. Yes.

Q. Had you known him before? A. No.

Q. Who introduced him to you? A. Why, as I recall it, Hoffacker.

Q. Do you recall what he said when he introduced Mr. Frankenberg to you? A. Why, he explained to us that Dr. Frankenberg had assisted or was a representative of Fritz von Opel and knew his father in many ways.

Q. Did you have any business discussions with Mr. Fritz von Opel and Mr. Hoffacker in Montreal? A.
1910 Mr. Bayer—at the request of Hoffacker, we reviewed the operations of the two companies and

made projections into the future as to what might be expected.

Q. How long did those discussions last? A. Oh, it was very brief. As I recall it, it was in the morning.

Q. How long did you stay in Montreal? A. That one day and left that night.

Q. You left that night? A. Yes, sir.

Q. You were not engaged in business conferences throughout the day? A. No.

Q. Now, directing your attention to the year 1937, did you have occasion to make a trip to Germany in that year? A. I did.

Q. Will you tell us under what circumstances that came about? A. At Hoffacker's request, I went to New York, and he told me that Fritz von Opel wanted him and he wanted me—I mean Mr. von Opel wanted Mr. Hoffacker—or Mr. Hoffacker invited me to join a technical congress tour of European manufacturing properties.

1911 I told Hoffacker that if the corporation was willing to spend money on that kind of business, I had what I considered a very much more useful reason for going to Europe.

Q. What was that reason? A. I had an old friend in the oil refinery engineering business in Wichita, Kansas, by the name of Fred Koch, of the firm of Winkler & Koch; that Koch and I had been investigating the usefulness of potential business opportunities in the development of the then rather obscure process known as the Fischer-Tropp process, which had been developed on full plant scale in Germany.

Q. By the way, what was this process? A. It was a process to synthetically produce gasoline from natural gas or from coal, and Koch's interest and my interest were in the American rights to develop the process of manufacturing gasoline from natural gas; and I explained to him that Fritz von Opel's connections in Germany, I considered, were valuable to the extent that he could

probably arrange a meeting between Koch and myself and those individuals in Germany who were in a position to grant such a license or contract.

Hoffacker apparently thought that was a good reason for making the trip to Germany and, as I understood it, communicated with Mr. von Opel—Fritz von Opel—and it ended up by Mr. von Opel agreeing or stating that he would assist us when we went to Germany.

1912 Q. When did you go to Germany, approximately? A. Well, April or May of 1937.

Q. Who were in the group that went to Germany? A. Theodore Hoffacker, Fred Koch, and myself.

Q. Did you go by ship? A. Yes.

Q. Do you remember the name of the ship? A. Queen Mary.

Q. Where did you go when you arrived in Europe? A. Well, we went to Berlin by Cherbourg and Paris.

Q. Where did you stay in Berlin? A. At the Bristol.

Q. Did you meet anyone in Berlin? A. Yes, I met Fritz von Opel.

Q. How long did you stay in Berlin on this occasion? A. Upward of a week.

Q. What did you do while you were there? A. We had —we—that is, Theodore Hoffacker and Koch and Fritz von Opel and myself—through the instrumentality of Fritz von Opel we met with a group who, as I recall it, I thought were the directors of the Ruhr Chemie. Now, there is a whole long string of words out from here, but it was a chemical corporation with a plant in Oberhausen.

We met with that group, our purpose was stated, and subsequently it was arranged that we could or
1913 would be permitted to visit the plant and talk to the plant director and the plant manager.

Q. Did you do anything else while you were in Berlin? A. Yes. In the meantime, Mr. von Opel extended every courtesy: took us to Potsdam, took us to night clubs, took us to galleries, and many points of interest.

Q. Mr. von Opel took you around Berlin, in other words? A. Yes, he did.

Q. Did he make any comments about Berlin while he was taking you around?

Mr. Ingoldsby: I object.

The Court: What is the materiality?

Mr. Baum: Its materiality is that Mr. von Opel has testified that he was a great anti-Nazi. I think it is material on that point.

Mr. Ingoldsby: Is the question of Naziism at all material?

The Court: I do not know that we are going into that. Are we? Is it brief?

Mr. Baum: It is very brief.

The Court: All right. Go ahead.

The Witness: He deplored the effect of the Nazis—Berlin Nazis, as he called them—on Berlin and described to me the changes in the city: They had cut trees
1914 down along the Unter den Linden; and the Emperor's Palace was shabby; and so it went.

The Court: I think we will take a five-minute recess now.

(At 11:15 a.m. a short recess was taken. The following then occurred:)

1915 By Mr. Baum:

Q. Mr. Crittenden, before we took the recess I believe you stated that you had conferences in Berlin and had arranged to go to Oberhausen; is that correct? A: Correct.

Q. Did you then go to Oberhausen? A. We went to Essen and stayed at a hotel there, and then, as business required, went from Essen to Oberhausen.

Q. And who is "we"? A. Mr. Fritz von Opel, Theodore Hoffacker, Fred Koch, and myself.

Q. And what did you do in Essen or Oberhausen? A.

We met the director, resident director, of the manufacturing undertaking, a Dr. Martin, and his assistants. There were a number of these conferences, in the first of which we stated what we wished to do, the type of contract we wished to develop.

They would take that under consideration. We would return to Essen and then, on notification, go back to Oberhausen.

Q. How long did you stay in Essen at this time? A. Upward of two weeks.

Q. I see; and during those two weeks you had conferences from time to time with officials of this plant? A. Yes, sir.

1916 Q. Did these conferences concern this Fischer-Tropp process you referred to? A. Tropp.

Q. What was your purpose in conferring on this Fischer-Tropp process? A. Koch and I had some knowledge of it from technical reviews and individuals who had been in Germany in connection with the construction of the plant. It was a plant in which there was certain accessory equipment furnished and installed by American companies.

At that time there was in the United States a great drive for additional crude equipment properties—let us say crude oil reserves, exploration—with the meager information we had, the Fischer-Tropp process looked like a highly commercial undertaking, inasmuch as there was a tremendous amount of natural gas being produced and being discovered all in the area in which I operated.

Q. And what did you propose to do with this process? A. Beg your pardon?

Q. I say, what did you propose to do with this process? A. We wanted the development rights of manufacturing synthetic gasoline from natural gas.

Q. By "we," whom are you referring to in this connection? A. At that time it was confined solely to
1917 Koch and myself. There was no solicitation of funds from Fritz von Opel.

Q. Did you conclude these negotiations in Oberhausen? A. We concluded negotiations there.

Q. And what was the conclusion of these negotiations? A. And were subsequently notified that there were American interests that had those rights. They, therefore, could not write a contract with us.

Q. Now, while you were in Essen, what was the relationship between Mr. Fritz von Opel and Mr. Theodore Hoffacker? A. Poor, growing to bad.

Q. What do you mean by your answer? A. Well, the conversations between Mr. von Opel and Hoffacker were in German, which I do not understand sufficiently to have followed them, but Hoffacker would be very abusive, very dominating, and leave the room and later recite to me this, that, and the other thing. I could best describe it, he considered Fritz von Opel a play boy, an incompetent, and that if it had not been for him, Hoffacker, Mr. von Opel would have lost his shirt. That was always his expression—that he considered Mr. von Opel very ungrateful.

Now, over the period—When I say it went from poor to worse, I recall driving back from Oberhausen and we came to a railroad crossing and a very violent argument occurred as we crossed the railroad crossing, and
1918 Mr. Hoffacker flourished his walking cane at him and then got out on the street and got in the car again. I don't know what it was about, but it was noisy.

Q. While you were in Essen did you have occasion to have dinner with Mr. von Opel? A. Oh, yes, nearly every night.

Q. Did you have dinner with him on the day of this incident in the car you referred to? A. Yes.

Q. Will you tell us about this dinner? A. Well, we returned to the hotel, and Hoffacker was very angry and would have nothing to do with Mr. von Opel, and, as I recall it, he and Koch went off to dinner together, and Mr. von Opel and I had dinner.

Q. And what was the discussion between you and Mr.

von Opel? A. Well, after dinner I asked Fritz von Opel what his relationship was to Hoffacker, and I also asked him who owned the funds and how he was operating.

Now, to give you a very general description, he told me that he was entrusted with the use of a considerable amount of money by his father under what he described as a usufruct contract and, in a general way, he had the handling of the funds and accounted back to his father; and also at that time related that he had a cousin, whose
1919 name I do not recall, who was operating under a similar usufruct contract with funds entrusted to the cousin by Fritz von Opel's uncle.

In response to my question about Hoffacker—and I think the question was properly put—here we were in business with Hoffacker, agent—little knowledge of the background—and at that dinner he told me that his father was very much exercised as a result of a report that his father had caused to be made as to who Hoffacker was and what kind of an individual he was, and apparently the report was adverse, and Fritz said that his father was very much concerned, was very angry that he was associated with Hoffacker.

Q. Was the name Frankenberg mentioned at this conversation at the dinner? A. I don't recall whether it was or not. Frankenberg—I had met him in Montreal, and his name ran through the thread of the story. I gained the impression that Dr. Frankenberg at that time was acting in behalf of his father and had assisted Mr. Fritz von Opel's father on many occasions and in many ways.

Q. Now, at the conclusion of these negotiations in Oberhausen, where did you go? A. I went to London and then to the north of Ireland, where a cousin lives.

Q. Now, at this conversation with Mr. von Opel in Essen, I believe you said that he testified that he
1920 had the use of the funds under a usufruct contract; is that correct? A. Well, I will have to reword it. He stated to me that the funds had been entrusted to him for investment and handling.

Q. By whom? A. By his father, under what he called a usufruct contract.

Q. Had you ever heard of a usufruct contract before? A. No, and I subsequently asked the lawyers to look it up; and the definition of it was so vague that none of us knew definitely what a usufruct contract was; but I gained, from what Mr. von Opel's conversation with me was, that his own compensation was derived from the profits of the handling of these funds.

Q. Now, you say you went to Ireland? A. Yes.

Q. Did you eventually return to the United States? A. Yes. Then I met Hoffacker and Koch in London and we proceeded to Southampton and sailed for the United States.

Q. Do you remember how you returned to the United States? A. You mean the name of the vessel?

Q. You came by boat? A. Oh, yes. We sailed from Southampton on The Cunard Line.

1921 Q. Is there any circumstance which enables you to fix approximately when you returned to the United States? A. Yes.

Q. What was that? A. Either the first or second day at sea, a ship paper carried the account of the burning of the Hindenburg, a dirigible, at Lakewood. Hoffacker was very much exercised. It took us back to Oberhausen, where he wanted the three of us to buy tickets on the Hindenburg and go back on it, and I remember Mr. von Opel's counseling me to keep my feet on the ground and take a boat.

Q. Now, after your return to the United States were there any negotiations or discussions concerning a consolidation of the companies you were interested in? A. Yes, there was.

Q. And with whom were those negotiations conducted? A. On return to the United States—In that year, as I recall it, business was pretty good, and Walter Bayer, of

the firm of Bayer and Clauson, who were auditors—they were auditors for Uebersee and they were auditors for the described other undertakings in which Mr. von Opel was operating—Bayer came to Shreveport on his usual—I forget—quarterly or semi-annual audit, and he stated he thought—he always referred to them as the Germans—

would prefer that the operating companies, Oil. 1922 Refineries and Oil Production, to be consolidated with three properties in which Grogan and Crittenden had the ownership, a small refinery with its pipeline in Arp, Texas, a larger pipeline in the east Texas field, and a refinery in Shreveport, and he requested that we give consideration to it; and, in general, an agreement was reached in which Grogan and Crittenden were to determine earning capacity, asset value, and that the same factors would be developed with Oil Production and Oil Refineries, to the end that an agreement would be reached having all the properties that were consolidated into one operating company, in which Grogan and Crittenden would have a financial interest, in addition to the management contracts.

Q. What form of a financial interest? A. Stock ownership.

Q. And what was the name of this enterprise in which Grogan and Crittenden had the ownership? A. There was a small refinery at Arp, Texas, known as the Trio Refining Corporation, the Centera Pipelines, and the De Soto Crude Oil Purchasing Corporation, and Rhodesia Oil Refining Corporation.

Q. And the proposal was to consolidate these corporations which you have just named with Oil Refineries and Oil Production? A. Yes, one corporate interest.

Q. Now, you said that you agreed with Mr. Bayer 1923 to evaluate your interest and he would evaluate the other interest? Was anything done in that connection? A. Yes, it was done.

Q. And what happened? A. Bayer notified us—notified

me, or he notified Grogan and me, that the Germans would like to have us come to Switzerland, complete the transaction, and we went.

Q. You went to Switzerland? A. Yes.

Q. When did you go to Switzerland? A. July or August of 1937.

Q. And where did you go in Switzerland? A. The Baur-au-lac Hotel.

Q. Where is that located? A. At Zurich, Switzerland.

Q. Who went on this trip to Switzerland? A. Mr. and Mrs. Bayer, Mr. Charlton Lyons, Mrs. Crittenden, and myself.

Q. And whom did you meet when you went to Zurich? A. I met Fritz von Opel and Dr. Hans Frankenberg.

Q. And how long did you stay in Zurich? A. Oh, I would guess the better part of three weeks.

Q. And what took place while you were there? A. There were discussions held in the offices of Frankenberg and Gaeng. Usually there was present Fritz von
1924 Opel, Walter Bayer, Hans Frankenberg, and myself.

Q. Did these conferences take place every day? A. Yes, in general they did, except for periods in which Frankenberg was out of town.

Q. And where did these conferences take place? A. In Frankenberg's office.

Q. Do you remember where that was? A. Yes; on—it is Peterstrasse Street or Peterstrasse Square, I remember.

Q. What was the subject of these conferences with the parties you mentioned? A. Well, the conferences started out with a review of the financial statements, earning power, asset value, of each of the business entities involved. Bayer—I, representing Grogan and Crittenden, and Bayer as auditor, representing Oil Refineries and Oil Production, and also Bayer in a most general way representing each group—he and I having worked over these figures during the transatlantic trip and had arrived at some indices or

factors by which we might conduct negotiations or subsequent division of ownership.

Dr. Frankenberg did most of the questioning. Many of the questions were referred to Mr. von Opel.

So the negotiations were carried on until we reached an agreement, near the end of the visit, on respective ownerships, and a general formula as to how we would
1925 carry on the consolidation of the ownerships of the property into one corporation.

Q. And was this consolidating corporation to operate with the same capital? A. No. 1, representing Grogan and Crittenden, asked that considerable additional working capital be put into the venture.

A very large part of the working capital of the refining and the pipeline properties had been furnished to the use of gross sales funds derived from a sales contract which Grogan Oil Company had with these companies. It was more or less of a quick turnover of funds and a credit relationship; and this was all explained to Dr. Frankenberg.

He recognized that we were operating under the influence, perhaps, of a large amount of money that did not exist. We knew we were, and we wanted more funds put in the company; and at that juncture in the proceedings, Dr. Frankenberg said that he would like to see the Grogan Oil Company's sales contracts extinguished and work out some different agreement. The company had its own sales department.

Now, further along the financial aspect of those discussions was the principle of whether the company should expand or retract. I recited to the group what I thought were many opportunities still to buy crude oil producing properties, which is the one thing I counseled.
1926 We had considerable valuable crude oil property in the ground that the company owned in the East Texas Field. There was a promise of an early and marked increase in crude oil posted prices, and there was certainly

the thought of a great many members of the industry that the day was not far off where the posted price of crude would be doubled.

Now, as a result of those discussions, I took the position that—there was one part of the discussion in which there was consideration of selling the crude oil properties and taking the profits, which I stated would be very large, and that the company would then be a refining pipeline company, without any crude oil reserves, insufficient funds, and I thought that it would not survive.

The net result of the meeting was an agreement as to how we would share the ownership in a consolidated corporation, an indication of new funds to be put in, and instructions to me to go back to the United States and survey the market towards investing additional funds in crude oil producing companies.

Q. An indication of new funds from whom? A. To be put up by the Germans.

Q. Who said that they would put up funds? A. Well, Dr. Frankenberg and Mr. von Opel under the general provisions of the agreement—"In consideration of consolidating, we will." Nothing in writing; verbal.

1927 Q. Were all these conferences in Zurich held in Frankenberg's office? A. Well, as I recall, all but one, and there was some technical matter regarding the accounting practices, crude oil reserve, depletion reserves, building labor and expense, and such items that he was not familiar with, and he did not feel very well, and we went to the Dolder Hotel, and Bayer explained it to me.

Q. Was Mr. von Opel present at the Dolder Hotel? A. I don't think so. I don't remember.

Q. What circumstances enable you to be certain that the conferences were held in the office of Mr. Frankenberg? A. Put that question again.

Q. I will withdraw the question.

How is it you happen to remember this office of Dr. Frankenberg so well? A. Well, unlike American—many,

I suppose, American offices—in a city as important as Zurich in Switzerland, on Peterstrasse either Square or Street, a building with flowers on the window sills—you went in. There was a little push button elevator that looked like a comic opera landaulet, all in pink satin brocatle; went upstairs; went to offices there which were great high doors and a little peephole like this. You pushed the button and a girl looked through the hole, and you
1928 went in; and the offices were quite ornate.

He had some very valuable paintings there on the wall and behind the door.

The first impression of an American coming out of Arkansas, Texas, Louisiana, to an office of that type—I suppose that is what registers in my mind.

Q. Did you have any conversation with Mr Frankenberg about those paintings? A. Yes. I kind of chided him on having—they were Degas originals, and Dancing Girls, Montemart—well known—and I sort of chided him on having them concealed behind the door.

Q. And did you have any other conversation with Frankenberg at this time? A. Yes, I did. I asked him very frankly what his relation was to Fritz von Opel and the business; and his reply was very simple and direct.

He said that he represented Fritz von Opel's father on many occasions in many places for many years and was assisting his father.

Q. Now, at the conclusion of these conferences in Zurich, did you have any conversation with Fritz von Opel? A. Yes.

Q. Will you tell us what that conversation was? A. Well, he indicated satisfaction with the idea that
1929 Dr. Frankenberg was willing to consider spending more money in crude oil producing properties.

He told me that Dr. Frankenberg had assisted his father out of great trouble, and related to me the Nazi nonsense—that was the first time I knew about it—where his father had been fined a sum, as I recall it, something like $400,000,

and we had contributed part of the funds and Dr. Frankenberg—

Mr. Ingoldsby: I did not hear the last part.

The Witness: I say, Dr. Frankenberg had been instrumental in supplying the remainder.

By Mr. Baum:

Q. After these conferences in Zurich terminated, where did you go? A. We went to Frankfurt and took a boat on the Rhine to Cologne, stayed there a little while, and did some sightseeing; then took the train from Cologne to Amsterdam and Rotterdam—that is, Mrs. Crittenden, Mrs. Lyons, and myself—and went to London, and the Bayers left us in Paris.

Q. Did you then return to the United States? A. Then we returned to the United States; Mr. and Mrs. Bayer by separate transportation than we did.

Q. In the same year, 1937, did you have occasion to meet Mr. Frankenberg again? A. Yes.

Q. Where did you meet him and approximately 1930 when? A. Well, I met him in the fall of 1937 at the Plaza Hotel in New York City.

Q. Was anyone else present when you met him? A. At that meeting, no.

Mr. Gallagher: May I interrupt just a moment? Mr. Baum, I think you are confused on your dates. The meeting was in 1938.

Mr. Baum: I think the witness will testify what his recollection is.

Mr. Gallagher: I believe he has testified in 1938. You said, "in the same year did you have occasion to see Dr. Frankenberg?" And then you say in 1937.

The Witness: No; I testified in the year 1937

Mr. Gallagher: I am sorry.

The Witness: My testimony has been confined to two trips, one to Germany and one to Switzerland, in the year 1937.

By Mr. Baum:

Q. You stated you met Mr. Frankenberg in the Plaza Hotel in New York? A. Yes.

Q. How did you know Frankenberg was in New York? A. Well, again, I received notice from Bayer that Dr. Frankenberg and Fritz von Opel would be in New York, and I went up there.

1931 Q. And you met Frankenberg? A. And I met Dr. Frankenberg, yes.

Q. Do you remember where you met him? A. Yes. It was in the afternoon and we had tea or a cocktail in the Palm Room. He did not like music; so we went out there and sat in the Palm Room.

Q What conversation did you have with Dr. Frankenberg on that occasion? A. He told me he was greatly distressed with the changing conditions in Europe, that he had to consider his responsibility to investors who he represented who had their funds in different countries, and some of them in the United States, and he felt he ought to stay as liquid as possible, and that he was going to review the whole situation, in view of the Zurich meeting, and would go back to Europe and then return, and he particularly at that meeting told me that he wanted to divorce Hoffacker from our business undertakings.

Q. Was the name Ulrich mentioned in this conversation? A. Yes. Then he told me he had an old friend who he thought very highly of named August Ulrich, and that he was going to ask Mr. Ulrich to represent him and ask for cooperation with him.

Q. By the way, where was this Palm Court you mentioned located, or Palm Room? Was it in the hotel? A.

Yes; on the ground floor of the hotel.

1932 Q. Of the Plaza Hotel? A. Plaza Hotel.

Q. Now, did you see Frankenberg again on that same visit to New York? A. Yes.

Q. When did you see him? A. Well, I think the same evening he and Fritz von Opel invited Mrs. Crittenden and myself for dinner, and we had dinner at the Plaza.

Q. Was there any business discussion at this dinner? A. No; purely social.

Q. After this New York meeting what did you do? A. Returned to Shreveport.

Q. Was anything done about the consolidation of the companies? A. Yes. The consolidation of the companies went ahead promptly upon the return of all of us to New York, I would have said quite early—it was started quite early in September of '37.

Q. When would you say that the consolidation was accomplished? A. Well, late '37 or early '38. There was a lot of detail to it.

Q. And under what name were these enterprises
1933 consolidated? A. Hurricane Petroleum.

Q. Now, directing your attention to the year 1938, did you meet Frankenberg in 1938? A. Yes.

Q. Where did you meet him? A. In Shreveport.

Q. What discussions did you have with Frankenberg in Shreveport? A. Well, he and Mr. von Opel were there together, and we reviewed—made a forecast of operations, and Dr. Frankenberg was utterly candid in stating that he wanted to get in a more liquid position, and he asked that we sell sufficient properties in order that the bond money of funds owed by Uebersee could be redeemed; and Mr. von Opel stated that that was his point of view, and he regretted that the situation changed.

Q. Were all the assets to be sold? A. No.

Q. Will you tell us what the proposal was? A. No; a fair enough proposal was put. Sell sufficient of the salable assets to redeem the bonds, the remainder of the proceeds

of the sale to remain in the company for two purposes, to pay obligations and to provide working capital.

Q. Were actions taken as a result of this discussion? A. Yes.

1934 Q. And what happened? A. Some months later the crude oil producing properties in the East Texas Fields were sold, the bonds redeemed, part of the funds distributed to pay debt and part for working capital.

Q. The payments for redemption of the bonds were made to whom? A. Well, I don't recall the name of the bank, but it was made to a bank or a trustee.

Q. What was the total amount of the proceeds of this sale of property, approximately? A. I think the gross of the sale was about $1,450,000. There might have been $300,000 worth of outstanding bonds. This is memory—16 years ago.

Q. By the way, shortly before you mentioned the name of Ulrich. What office did he hold in this corporation? A. He took—Hoffacker's resignations were accepted, and Ulrich was an officer in Hoffacker's capacity and without salary.

Q. Did he succeed Hoffacker as president? A. As I remember it, he did.

Q Now, did you remain associated with Hurricane Petroleum Corporation? A. No, not for very long. Mr. Ulrich and I did not get along at all, and his public utter-

1935 ances and his behavior in Baton Rouge and in Shreveport destroyed every vestige of credit we had, and I took him to task on the subject, and he asked for my resignation, and I told him I would give it; and I cabled Fritz von Opel at Kampen Sylt between the time that Ulrich asked for my resignation and the time I gave it and told him that Ulrich's utterances were such that the local banks refused any further financial support, and got an answer that he was powerless to assist.

I then tendered my resignation.

Q. When did you tender that resignation? A. Well, in the middle of '38.

Q. Middle of '38? A. Yes.

Q. Did you ever have any further business dealings with Fritz von Opel after your resignation? A. No.

Q. Did you ever have further business dealings with Mr. Frankenberg after your resignation? A. Business dealings?

Q. That is right. A. No.

Q. Did you ever see either of them again? A. Yes. I called on Dr. Frankenberg in his office on Broad Street, purely a social call, based on meeting Isadore Kresel in a camp in Maine.

1936 Q. When was this? A. I guess '40.

Q. 1940? A. Yes.

Q. Now, directing your attention again to the year 1938, did you ever have any discussions with Fritz von Opel concerning hydraulic pumps? A. Yes.

Q. Will you tell us what those discussions were? A. As I recall it, at the date of the last meeting in Shreveport with Dr. Frankenberg and Mr. von Opel, he related to me that the German government had requested his father or himself to consider the construction of two types of manufacturing plants, one a plant to manufacture light structural buildings and the other to manufacture radiators, and there was involved in each hydraulic pressing equipment; and I gave him, as I recall it, the name of some American manufacturers of hydraulic systems.

Q. Did you also have a discussion with him about flash welding? A. Yes, and gave him the name of a group in New York who had perfected the flash welding process of manufacturing paper-thin copper radiators.

Q Were you told what these radiators were for? A. As I recall it, it was part of a German national

1937 scheme, maybe a Strength Through Joy movement. They were going to manufacture low-priced auto-

mobiles. They were going to produce low-cost housing. Each of these ventures would have been dovetailed into that national move.

Q. The radiators were for the housing? A. I guess so.

Q. Now, did you have any discussions in the year 1938 with Mr. Fritz von Opel concerning drilling equipment? A. Yes; the same visit.

Q. The same visit? A. He told me that he had an interest in aluminum ore bearing properties in Hungary. Labor was very cheap. The problem was to get more ore out, and he would like to inspect American building equipment.

I made arrangements with one of the local companies to show him a star drilling machine and a core drilling machine and, as I recall it, furnished the names of corporations with New York addresses which could give him details as to cost, and so forth.

Q. Did you have any further conversations with him as to this aluminum property in Hungary? A. Oh, yes; both him and Dr. Frankenberg. There was a general discussion—going back to Europe, and I was going to take a walking tour with the Doctor, and Fritz was going to drive me to Hungary.

1938 Q. To Hungary? A. Yes.

Q. For what purpose? A. To show these ore mines. He told me they shipped quite a lot of ore to Germany, they did not get money for it and his father did not like it very much.

Q. Did you have any discussion in the year 1938 with Mr. Fritz von Opel about income taxes? A. Yes. He suggested to me that there would be a very substantial income tax payable by Grogan and myself.

He suggested that we might take meager profits in the company, take title to funds in Switzerland, avoid payment of the tax.

Nothing was ever done beyond commenting on it that I did not think he appreciated how far reaching the Government would be in looking for those taxes.

Mr. Baum: You may inquire.

Mr. Ingoldsby: Read me the last question and answer.

(The last question and answer were read by the reporter.)

Cross Examination

By Mr. Ingoldsby:

Q. Mr. Crittenden, I want to ask you about the first occasion when you met Mr. von Opel. Will you state the date as nearly as you can recall it? A. Let's see. I would say in the spring or summer of 1933.

1939 Q. Spring or summer of 1933, and I believe that you stated you met him either in Shreveport, Louisiana, or in New York City; is that correct? A. No; in Scarsdale.

Q. Scarsdale. Let me refresh your recollection. Didn't you meet him in Shreveport, Louisiana? A. Yes, many times.

Q. I mean the first time. A. I made the statement that I can't remember whether I met him in Hoffacker's house in Scarsdale first or in Shreveport first. I don't recollect.

Q. Do you remember that he was driving a yellow Mercedes car when you first met him? A. I remember he had such a car in Shreveport. It broke down.

Q. Because it broke down? A. Well, it broke down and there was a great local furor in getting that car under way again.

Q. A very flashy looking car, wasn't it? A. Yes, and Fritz looked funny to that public. He had a beret and funny looking clothes. It all looked funny to the Southerner in Shreveport.

Q. And that was in 1933, wasn't it? A. As I remember it, it was.

1940 Q. Wasn't it the occasion when you first met Mr. von Opel? A. I don't recall whether I met him in Scarsdale first or in Shreveport first.

Q. Where did he go from Shreveport when he left? Do you know? A. Now you have refreshed my memory. I am going to change the date. I think it was quite late in '33 that he was in Shreveport.

Q. In fact, it was in the winter, wasn't it? A. Because he and Hoffacker started off and they got stranded in the hills of Alabama some place. That created another furor. There were blankets around their heads. They skidded. We got telephone calls.

Q. When was that? A. Very late in '33 or early in '34, but suffice it to say that it was cold enough to create ice on the road.

Q. Did you ever see that car again? A. I never saw it at any time.

Q. I see. A. I heard about it, but I never saw it.

Q. You are presently employed with a firm named Westcott and Mapes; is that correct? A. That is correct.

Q. A civil engineering firm? A. Yes, consulting 1941 engineers.

Q. Where are their offices? A. Their office is at 109 Church Street, New Haven, Connecticut.

Q. When you first became acquainted with Mr. Hoffacker you were engaged in business for yourself; is that correct? A. That is correct.

Q. Did you close this business when you went with the von Opel oil properties? A. No.

Q. That business remained open? A. Yes, for several years, until this consolidation of all of the properties into the Hurricane Corporation. Then all of the interest owned by Crittenden Engineering was purchased and the company liquidated and, I think, extinguished. I am not sure of the latter. I know it ceased to operate under the name of Crittenden Engineering.

Q. In what year? A. I would have said in '37.

Q. What finally became of the Hurricane properties? A. I don't know; went to bankruptcy.

Q. They did go into bankruptcy, didn't they? A. I understand. I wasn't there.

Q. At that time was the Grogan Oil Company 1942 merged with Hurricane? A. Never.

Q. That was not? A. Never, to my knowledge.

Q. Did the Grogan Oil Company go into bankruptcy, too? A. Not to my knowledge.

Q. Regarding your first meeting with Hoffacket, with relation to Mr. von Opel, I believe it was your testimony on direct examination that Hoffacker told you that he was an adviser, an agent, of Fritz von Opel; is that correct? A. Yes.

Q And it is your further testimony that he never deviated from that statement; is that correct? A. Never.

Q. The first employment you had concerning Fritz von Opel or Crittenden was to conduct this survey of oil properties in the Southwest; is that correct? A. Now, your question again?

Mr. Ingoldsby: Read it.

(The last question was read by the reporter.)

The Witness: No.

By Mr. Ingoldsby:

Q. Was it? A. No.

Q. What was the first development? A. It was between Theodore Hoffacker, agent, and Crittenden 1943 Engineering.

Q. Yes. I was asking you the purpose of the first employment of the Crittenden Engineering firm. A. Was to make a survey of potential investments in the oil business.

Q. When did you first meet Mr. Bayer? A. I met—

Q. Just your best recollection. A. Well, as I recall it,

I did not meet Bayer until operations of Oil Refineries, Incorporated had been established and the first audit made. I would think maybe that is '33 or '34.

Q. I believe that you said that Bayer usually referred to the owners or the boss, or whatever it may be, as the Germans; is that correct? A. Usually the Germans.

Q. Was that customarily the term applied? A. Yes.

Q. And did you use that term also? A. Yes.

Q. And that term never designated any particular Germans, did it? A. Hoffacker and von Opel.

Q. That was what was generally understood—

1944 Hoffacker and von Opel? A. Yes.

Q. Is that what you generally understood by the term "Germans"? A. It was loosely used, yes. In the daily conduct of business, it was the Germans.

Q. What was your understanding of that term? A. Beg your pardon?

Q. What was your understanding of that term? Was it Hoffacker and Fritz von Opel? A. Well, my more specific understanding of that term was that Fritz von Opel had had entrusted to him by his father a considerable sum of money, was handling those funds through a usufruct contract, and that Theodore Hoffacker was agent for Fritz von Opel, and that Fritz von Opel did not breathe, move, or talk without his permission and his advice.

Q. Now, how did you get all that impression? A. Well, Hoffacker's utterances were so preposterous that we had them looked up. This was no idle talk. He made him out an incompetent play boy and that he would have gone to the wall—

Q. That was in 1937? A. No; '33, '34, '35, '36, and '37, the whole time.

Q. And that was the general tenor; is that correct? A. Always.

Q. Finally, Fritz von Opel and Hoffacker had a

1945 break, didn't they? A. I don't know.

Q. Don't you know about that? A. No, sir.

Q. You do not know anything about any difficulties between Hoffacker and von Opel? A. Yes. I know one instance in which Hoffacker told me that he was what I was pleased to term going to blackmail Fritz, and he told me his whole plan in New York, and he wanted me to join in it, and I said I would have nothing to do with it.

He tried to persuade me to join him in it, and I went down to the steamship he was sailing on, and he took me downstairs to the cabin, and he told me all about it; and I told him no, I would have nothing to do with it; and I went back and reported to Walter Bayer the name of the ship and the cabin number that Hoffacker had sailed on and the purpose of the trip.

That is the first and last and altogether that I know—

Q. Well, then, you did know about difficulty between Hoffacker and Fritz von Opel, didn't you? A. Well, after he had related to me a blackmailing expedition, I took action, sure.

Q. You stated that the impression you gained, you gained as a result of your knowledge of the usu-
1946 fruct contract; is that correct? A. The usufruct contract?

Q. Yes. A. Yes.

Q. Will you explain what you understand the usufruct contract to be? A. In this case—I will confine it to this case—

Q. All right. A. Fritz's father—

Q. Let me start at the beginning.

Mr. Burling: Let the witness finish, please. If Your Honor please, counsel interrupted the witness.

The Court: All right. Let him complete his answer. Then ask him another question.

Mr. Ingoldsby: Well, I would like to start at the beginning by asking him what he understands by usufruct before we start talking about usufruct contracts.

Mr. Burling: May I respectfully request that the witness be permitted to finish his previous statement which he started and which he interrupted.

The Court: Proceed.

By Mr. Ingoldsby:

A. My understanding—my personal understanding;
1947 Q. Yes. A. Oh, the obvious thing. The use of the fruit of the proceeds. I don't think it means anything. Based on what Fritz told me, it was quite clear.

Q. All right. What was that? A. That a considerable sum of money derived from the sale of the Opel Motor Works and in one of the banks in New York had been entrusted to him by h father to be invested and to be handled; that his agreement with his father was specified under what he described to me as a usufruct contract; that his living expenses and traveling expenses and sporting expenses, and so forth, were derived from the earnings and the proceeds of the use of these funds; and that Theodore Hoffacker was his agent, subsequently much to the concern of his father—my understanding.

Q. That was your understanding? A. Yes, sir.

Q. From what Fritz told you? A. From what Fritz told me and from what Hoffacker represented to us.

Q. Did you ever see the gift agreement? A. No, sir, I never saw any agreement. Listen, let me cut it all short and quick. I recite to you my memory of conversations.

Q. I appreciate that this is many years ago. I am not trying to trip you on any details. I am simply ask-
1948 ing if you saw any agreement. A. No. That was described to me as the usufruct contract.

Q. At the time that you had that discussion did you ever hear of 20 percent and 80 percent—those figures? A. No, sir, no percentages.

Q. You did not? A. No, sir.

Q. No percentages? A. No percentages. All I understood with respect to partition, that Fritz derived his income from the proceeds, profits of the handling of this fund.

Q. I want to ask you a question about the conferences which you have described in Zurich, Switzerland, regarding the oil company mergers. A. Yes, sir.

Q. Will you state again, please, when it was you went to Switzerland? A. Well, July or August of 1937.

Q. And did I understand you to state that you spent about three weeks in Switzerland on this occasion? A. I think so.

Q. And were you in conference during that entire period of time? A. No; no. We were in conference nearly
1949 all of the time that Dr. Frankenberg was there, and there were periods that he was absent, and during one of those periods it was long enough to take an automobile tour through Switzerland, which was recommended by Mr. von Opel, and we took it, went through parts of Switzerland and into Italy.

Q. What is your best recollection at the present time as to the length of time that you actually spent in Switzerland? A. Actually spent in Switzerland. I think the better part of three weeks.

Q. And how many conferences would you say you had in that period of time with Fritz von Opel? A. About ten, twelve.

Q. You think maybe ten conferences? A. Yes.

Q. And was Frankenberg present at each of those conferences? A. Yes.

Q. Frankenberg was present? A. Put it this way. Fritz von Opel was present in all but one, which was held in the Dolder Hotel on a very technical matter concerning accounting.

Q. All of the rest of the conferences were held in the offices of the board room of the Adler Bank, were they not?

A. Oh, now, I don't know about that. All I knew I
1950 was, I was in Frankenberg's and Gaeng's office on Peterstrasse. I don't know anything about those offices of the bank.

Q. You mean Frankenberg? A. Frankenberg.

Q. Was not Frankenberg's office in the bank? A. I don't know. I really don't know. I was directed where to go, given an address, and went there. It was in the offices of Frankenberg and Gaeng.

Q. Now, with reference to the time that you spent there, I am going to ask if this will refresh your recollection. I am going to ask you to assume that the following dates and places that I read to you come from the notes of Bayer and Crittenden.

On July 29, 1937, you arrived in Cherbourg. On July 30 you arrived in Paris and left for Switzerland on the same day. On July 31 you arrived in Zurich. August 1 was a Sunday, so nothing was done, and on the 2nd, 3rd, 4th, and 5th there was a business conference on each one of those days, and August 6th, 7th, 8th, and 9th were spent in an auto trip through Switzerland, and that on August 10 you returned to Zurich, and on August 11th and 11th you left Zurich. A. It sounds reasonable.

Q. Would that sound about right to you? A. Yes.

Q. So the only time that was actually spent trans-
1951 acting any business was August 2nd, 3rd, 4th, and 5th. Would that be about correct? A. Well, I would have thought, by the nature of things, that we probably concluded our business the last day or two days that we were there.

Mr. Ingoldsby: Your Honor, I have a subject that I am going to go into at some length. Does Your Honor plan on recessing for luncheon?

The Court: Can't you use the remaining time?

Mr. Ingoldsby: Yes, I can.

By Mr. Ingoldsby:

Q. I want to ask you about your trip to Germany in the summer of 1937. Will you tell us, please, when it was that you left the United States? A. You mean the exact date?

Q. No; approximate date; the month. A. Well, wait a minute. Can you recall the date of the Coronation of the King of England?

Q. I most assuredly cannot. A. Well, I am in a bad fix. We sailed on the QUEEN MARY on a date that we could get a passage. It was very crowded on account of the Coronation. I would have said April or May, but I can't remember—wait a minute. We spent two weeks, three weeks, another week—that's four weeks— and wanted to get home—well, let's guess at April.

1958 Q. Now, where did you first go in Europe? A. Cherbourg and Paris.

Q. Did you meet Fritz von Opel there? A. No, sir.

Q. When did you first meet von Opel? A. The day following, in Berlin.

Q. And how long a time did you spend in Berlin on that occasion? A. As I recall, the better part of a week.

Q. And what was the purpose of spending the week in Berlin? A. Well, there was time consumed in arranging the conference date with the directors, the officials of this chemical corporation.

Q. Where were the conferences to be? A. Wherever Mr. von Opel could arrange that they would be, and they were held—the first conference, the director group, was held in Berlin.

Q. And where did you go from Berlin? A. We went to Essen.

Q. And did you confer in Essen on the same topic on which you conferred in Berlin? A. I have already testified that the conferences with the chemical group were held in their manufacturing plant offices at Oberhausen. We

stayed in Essen because there was a hotel there.

1953 Q. And Oberhausen is near Essen, isn't it? A. Yes; not far away.

Q. What was it you were trying to accomplish by these conferences? A. We wished to develop the American rights—or, rather, we wished to consummate a contract to develop the American rights for manufacturing gasoline and other petroleum products synthetically under the patents and process rights of the so-called Fischer-Tropp system.

Q. And that was a patented process to do what? A. Synthesize gas to liquid hydrocarbon.

The Court: I suppose this is a good place to stop. 2 o'clock.

(At 12:30 p. m. a recess was taken until 2 p. m.)

1954 AFTERNOON SESSION

(The trial was resumed at 2 p. m., upon the expiration of the recess.)

Thereupon, BUTLER PARNELL CRITTENDEN resumed the stand and, having been previously duly sworn, testified further as follows:

Cross-Examination (Continued)

By Mr. Ingoldsby:

Q. Mr. Crittenden, we were talking about your trip to Germany in 1937. What was the result of that trip from the standpoint of whether or not you ever acquired the process you went there to investigate? A. We did not acquire it.

Q. Was that your final judgment in the matter? A. No.

We were notified by Mr. von Opel that the Ruhr Chemie had a contract or other arrangements, or prior contractual arrangement, with an American concern.

Q. You mentioned this morning that the crude oil producing properties which were first owned by Oil Production, Incorporated, and later by Hurricane, were sold for about $1,400,000; is that correct? A. That is my remembrance.

Q. Did you approve of this sale, or did you feel that it should be kept and new capital added? A. I very
1955 strenuously took the position that if the company was going to continue, they should not sell those properties.

Q. You felt that the investment in those properties was a very good investment; is that correct? A. It had proven itself, and its potentialities, in my opinion, were very great.

Q. Returning, again, for a moment to your meeting in Zurich in 1937, did you mention some properties, in connection with that visit, which you and Grogan owned at the time of the Zurich meeting? A. Yes.

Q. Will you give me the names of those? A. Trio at Arp, Texas, and a small pipeline in conjunction with it; and DeSoto Crude Oil Purchasing Corporation, a pipeline system.

Q. What was that last one? A. DeSoto Crude Oil Purchasing Corporation.

Q. What was the value of those properties at the time of your meeting in 1937? A. Well, I don't recall now.

Q. Just give us your best estimate. A. A couple of hundred thousand dollars. Now, I take that as a rank, ancient memory.

Q. Now, who owned that? You and Grogan to-
1956 together? A. Yes.

Q. Are you able to give us an estimate of what those properties would be worth today? A. Three or four times their value based on increased costs, reproductive costs, earning value, and so forth.

Q. Would that also be based upon the potential which some of those properties had at the time and which have been established by virtue of the passage of time? A. What do you mean?

Q. I am referring to the output of the oil-producing properties. A. I have not included any oil-producing crude oil properties in this estimate. You asked for the properties owned by Grogan and Crittenden.

Q. That is right. A. None of them were crude oil producing properties.

Q. Did you own any crude oil producing properties? A. No.

Q. Now, with reference to the properties which you mentioned just before, that is, Trio and DeSoto— A. Yes.

Q. (Continuing) did those properties go into the merger which ultimated ended as Hurricane or which ultimately became Hurricane? A. As I remember it, they did.

1957 Q. What did you receive in exchange for those properties? A. Our management contract and, roughly, about a 22 to 25 per cent interest—stock interest—in the company.

Q. A 25 per cent interest in the newly formed Hurricane; is that correct? A. Yes.

Q. Did Hurricane operate successfully for a time? A. Yes.

Q. After Mr. Ulrich was put in charge of the Hurricane Corporation, did the company then get into difficulties? A. Immediately.

Q. What year was that? A. 1938.

Q. Can you give us the approximate month? A. Oh, let us say in the middle of the year, Mr. Ingoldsby.

Q. About the middle of 1938. Do you feel that the reason that the company got into difficulty in the middle of 1938 was a lack of capital? A. I do.

Q. You do feel that was it? A. That was one reason,

and it was—the principal reason was Mr. Ulrich's
1958 behavior and utterances. The banks we did business with came to us and said, "We can't go with you any longer."

Plans that we had, that were quite near fruition, which was principally a pipeline to pipe gasoline from seven or eight refiners in the East Texas fields and two or three refineries in Shreveport to the Mississippi River, which was our only way out at that time in marketing our goods in competition with refineries farther north. We needed to reduce our costs of transportation, and he just flatly, any time the subject came up with those jointly—conjointly—interested in the matter—he will have a good deal to do with it.

Q. So you feel that the failure of Hurricane was partially due to Ulrich's personality? A. No, not his personality.

Q. Well, his actions? A. What he said; what he did.

Q. Do you feel that the situation might have been different with regard to Hurricane had you continued in the management of the Hurricane company? A. Personally?

Q Personally. A. No change. The harm had been done. They had sold the producing properties. There were
1959 not the operating funds to continue the company.

Q. My question is, if you had been in charge of the company, and if Mr. Ulrich had not been put in charge, do you feel that the result would have been different? A. Yes.

Q. In other words, you feel that the company probably would not have gone through difficulty? A. I feel this: that I probably could have completed negotiations for capital to acquire the pipeline and to do other things without the obstruction of Mr. Ulrich.

Q. Now— A. Now, let me explain the extent to which this was done and the earnestness which was displayed. Approximately ten small companies, subscribed, oh, $20,000 to $40,000 to make a survey of markets reachable by pipeline and water in the Mississippi Valley, our natural water-

way. The report was very favorable and, in addition to that, the venture was considered very favorable by two or three of the large companies who at that time were convinced that there was a war coming along and would have liked to have seen the whole thing consolidated into a picture of normal flow of goods at the lowest rates.

Q. I see. A. Now, that survey was completed, and the several members involved were ready to go ahead,
1960 and we did, with a company as reliable as White-Weld Company.

Now, Mr. Ulrich's stampeding around—he did not know what he was talking about—or he did—introduced a situation in which nobody would touch anything.

Q. I see. Generally speaking, the whole Ulrich situation was unsatisfactory from the standpoint of the operation of Hurricane; is that putting it succinctly? A. No, I don't believe it was. I think that the operation of the company with Ulrich as an officer—that its chances were gone. I think his behavior, at least prior to becoming an officer, sealed the story.

Q. Now, with reference to similar types of oil enterprises during the immediate pre-war period and the war period, practically all of those enterprises operated profitably, didn't they? A. Yes, all that I—now, wait a minute. Put your question again. That is very broad.

Q. I say that, generally speaking, the immediate pre-war period and the war period was a period of great prosperity for the oil industry, wasn't it? A. Tremendous.

Q. Wouldn't it be a fair statement to say that if this property had continued in operation the way you anticipated, it is reasonable to assume that this property also would have become a very successful operation?
1961 A. Yes, and far beyond any estimate that I would give you, in view of the fact of the value of crude oil reserves in the ground and the posted price of crude oil—the crude oil reserves in the ground together with the posted price of crude which ensued.

Q. I see. So— A. Each fact far in excess of any prediction or estimate I made to Dr. Frankenberg or Mr. von Opel.

Q. Are you in a position today to make an estimate of what those properties would have been worth today? A. No, I am not.

Q. Would it be a fair statement to say they would be worth several times what they were then worth? A. In my opinion, yes. You are talking about the properties in Hurricane before Hurricane divested itself of crude oil reserves?

Q. Yes, sir. A. That is right.

Q. Now, instead of that happening, Hurricane got into great financial difficulty and went bankrupt, didn't it? A. Yes.

Q. As a result of that bankruptcy, you personally lost, together with the others, didn't you? A. Everything. I turned in everything that I had.

Q. You lost everything that you had? A. In the 1962 company. Everything. I turned in my stock and took Grogan's note for $40,000. He was indebted to the company. They owed me 18, 19, or 20.

Q. So, all told, how much do you feel you actually lost in Hurricane? A. You mean if they had yielded?

Q. First of all, I wanted to ask you just the way—taking things as they happened, how much did you lose? A. I lost, I guess, $300,000—$500,000.

Q. You feel, do you, that had things been different, and had the property been properly managed, it had a great potential; isn't that correct? A. No.

Q. You do not feel that? A. No. I have only one feeling. If the crude oil properties had not been sold, and the additional capital had been put in, everybody would have made an extremely large amount of money.

Q. So the potential that was lost was in fact much greater— A. When they sold the producing properties, a

tangible asset on which you could raise money at a bank for working capital to carry on your business.

Q. Are you through? A. Yes.

1963 Q. I did not mean to interrupt you. Go ahead if you have not finished your answer. A. I only make one more comment. The language used to Mr. Ulrich, which he did not understand, was always this: with this amount of money, we can buy this number of barrels of crude. And I took exception to it. The language used was they might buy that number of barrels a day of current production. They could not replace the asset value, the East Texas crude producing properties, that were in the ground and not producing. They could not have been replaced at that time. As a demonstration, they were sold, as I recall it, for $1,450,000.

Mr. Ingoldsby: Thank you, sir.

Mr. Baum: No questions, Your Honor.

(The witness left the stand.)

Mr. Burling: We will call Miss Magdalena Schoch.

Thereupon, MAGDALENA SCHOCH was called as a witness and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burling:

Q. Miss Schoch, where were you born? A. I was born and raised in Germany.

By the Court:

1964 Q. How do you spell your name? A. S-c-h-o-c-h. My first name is M. Magdalena.

By Mr. Burling:

Q. Of what country are you presently a citizen? A. I am a citizen of the United States.

Q. Did you acquire citizenship by naturalization? A. Yes, by naturalization in 1943.

Q. Prior to that time you were a citizen of Germany? A. Yes.

Q. Are you a member of any bar? A. I am a member of the Bar of this Court.

Q. When were you admitted to the bar? A. I was admitted to the bar in 1947.

Q. Going back to Germany, will you state briefly what education you had in Germany? A. After elementary school and high school, I took a four-year law course in the law faculties of the Universities of Wurzburg and Munich, and I received the degree of doctor of laws.

Q. So you are entitled to be called Dr. Schoch if you so wish; is that correct? A. Well, if you like; I prefer to be called Miss Schoch.

Q. But are you entitled to be called "Doctor"? A. Yes.

1965 Q. After you received your doctor's degree, what did you do next? A. I became research assistant to Professor Mendelssohn-Bartholdy in the law faculty of the University of Hamburg, Germany.

Q. In addition to being research assistant to Professor Bartholdy, did you occupy any other position with the faculty at the University of Hamburg? A. I was appointed lecturer in the university; and in 1932, after having filled the usual requirements, I became a member of the law faculty with the title of Privatdozent.

Q. Did you hear Professor Kaufmann testify in this Court? A. Yes, I did.

Q. Did you hear him testify that he had become appointed a Privatdozent in the Swiss University? A. Yes.

Q. Did you hear him testify that that was a rank be-

tween an assistant and an associate professor in this country? A. Yes; that is what I would say.

Q. You agree with that? A. Yes.

Q. That is the academic rank— A. It is the
1966 German equivalent of the Swiss.

Q. Is that the academic rank which you held at the faculty at the University of Hamburg? A. Yes.

Q. Did you organize anything under Professor Mendelssohn-Bartholdy? A. I organized an institute for comparative and international law, together with Professor Mendelssohn-Bartholdy, and we also organized cabinet studies in that particular field.

Q. Going back to the time when you were made a member of the faculty at the University of Hamburg, will you state, if you have any personal knowledge, whether any other woman in the history of Germany had ever been made a professor of law in a German university before you had? A. As far as I know, I was the first one to attain that status in a law faculty.

Q. Up until the time you left Germany, do you know of any other woman was ever made such? A. No.

Q. Will you state whether you taught any particular field of law; and if so, what? A. I taught conflict of laws, comparative law, also some fields of German law, such as
a course which gave a general introduction in the
1967 civil law of Germany, and a course in bankruptcy; at one time also a course on jurisprudence.

Q. You did not become a member of the bar in Germany, did you? A. No, I did not.

Q. When did you come to the United States the first time, and under what circumstances? A. I first came to the United States in the fall of 1934 under a research fellowship of the Rockefeller Foundation.

Q. At the time you accepted the research fellowship of the Rockefeller Foundation, did you intend to emigrate from Germany, or did you intend merely to come here on a

trip and then return to Germany to live? A. I came here on a visitor's visa. I intended to return to Germany. As a matter of fact, this was one of the conditions of the Rockefeller grant.

Q. Specifically, did you return to Germany at the termination of the grant? A. Yes.

Q. Before you left Germany, did you make or file any paper, or did you cause to be filed any paper, with the German police authorities? A. I don't remember whether I personally filed it or whether my mother, with whom I lived at the time, filed it; but I know that—I remem-
1968 ber that a so-called abmeldung was filed with the police authorities in Germany, because I was leaving for one year.

Q. Will you state what an abmeldung was, who was required to file it, and under what circumstances?

Mr. Boland: I think we should wait until Miss Schoch is qualified to testify on German law. There are a few questions that I wish to ask her.

Mr. Burling: Certainly. I took it up in the middle of her qualifications because it came in that she personally filed one. I withdraw the question.

By Mr. Burling:

Q. What did you do while you were in the United States under the Rockefeller fellowship in 1934? A. I visited various law schools in this country with the particular purpose of studying methods of teaching conflict of laws and a more general purpose of studying the American system of conflict of laws.

Q. How long did the fellowship last? A. One year.

Q. After that was over, what did you do? A. I returned to Germany and resumed my duties at the University of Hamburg.

Q. Did there come a time when you again left German?

A. I left Germany in the fall of 1937 when an im-
1969 migration visa and came to this country.

Q. Without going into details, will you state briefly why you left Germany in 1937? A. I left Germany because I was opposed to the Nazi regime and was not willing to compromise with the regime.

Q. When you arrived in the United States—or before that, where did you go when you left Germany? A. I came directly to the United States.

Q. Where did you go in the United States? A. I first went to stay in Buffalo, New York, and I spent one year studying and doing research work of my own until the fall of 1938.

Q. Then where did you go? A. Then I went to the Harvard Law School, where I had obtained a position as research associate.

Q. While you were research associate at the Harvard Law School did you work with any particular professor? A. I worked mostly with Professor Irwin Griswold, who is the present dean of the Harvard Law School. I taught in his seminar—on various seminars—on conflict of laws and comparative law.

Q. That is, you and the present dean of the law school jointly carried on a seminar in conflict of laws; is that right? A. That is correct.

1970 Q. How long did you remain at Harvard? A. I remained at Harvard for five years.

Q. Was there any other woman on the faculty of the Harvard Law School, by the way, when you were there? A. No, there wasn't. Frankly speaking, I wasn't on the faculty; I was associated with the faculty.

Q. Does Harvard have a library of foreign law materials? A. Oh, yes; Harvard Law School has a very extensive library on foreign law.

Q. After you left Harvard, what did you do next? A. I was appointed to a position in the Office of Economic

Warfare in Washington, which later was reorganized into the Foreign Economic Administration. I first was a consultant on German law in the Reoccupation Division of the Office of Economic Warfare.

Q. At the end of your employment by the FEA, what was your position? A. I was a section chief in the property division of the FEA; and during the last month I was acting division chief.

Q. You were acting division chief of what division? A. Of the property division of the German branch of FEA.

Q. Did your duties in that connection involve any
1971 matters involving German law? A. Yes; my work was mainly concerned with German law.

Q. Following your departure from the FEA, where did you go next? A. I left FEA in December, 1945, and went for a brief employment with the Practicing Law Institute in New York.

Q. And after that? A. After that I came to the Department of Justice at Washington as a foreign expert in the Claims Division.

Q. What did you do after that? A. At present I am an attorney in the Office of Alien Property.

Q. Your duties were transferred from the Claims Division to the Office of Alien Property; is that correct? A. Yes.

Q. You are presently an attorney in the litigation branch of the Office of Alien Property? A. Yes.

Q. Have you ever published any books or articles on legal subjects? A. Yes, I have.

Q. In what languages? A. In the German language in Germany, and in the English language in this country.

1972 Q. Have you ever testified as an expert witness, as an expert on German law, before? A. Yes, I have.

Q. Will you state in what courts? A. In the state court of California—in two state courts in California—in the

Federal Court at Miami and in Federal Court in Boston—Federal District Court in Boston.

Q. Now, will you go back to the question of the abmeldung—

Mr. Boland: I have a few questions I should like to ask this woman on qualifications.

The Court: All right.

By Mr. Boland:

Q. You stated you are a member of the Bar of this Court, Miss Schoch? A. Yes.

Q. And that you are not a member of the bar of any other court; is that right? A. That is right.

Q. You are not admitted to practice in Germany? A. No.

Q. Not admitted to practice at all in Germany? A. No.

1973 Q. In those cases in which you have testified as an expert, what was the nature of your testimony?

A. The testimony was concerning, in the California courts, the question of the German inheritance law and German foreign exchange control law.

In Miami my testimony was on foreign exchange—German foreign exchange control legislation.

In Boston I testified on certain aspects of German patent law.

Q. Your qualifications seem to indicate that you spend most of your time in conflicts of law—international conflicts of law. A. Conflict of laws and comparative law, I would say.

Mr. Boland: I should like to call upon the Government to give the nature of this woman's testimony in respect of expert testimony.

Mr. Burling: If Your Honor please, it is a matter which I think will take perhaps three hours of testimony.

Mr. Boland: Just briefly the nature in which you are expecting her to testify and the subjects to be covered.

Mr. Burling: In relation to the German law of usufruct, in relation to the German law on foreign exchange; also in relation to how the German courts would construe the instrument which is Plaintiff's Exhibit 5, which plaintiff's law expert, Professor Kronstein, has testified to at such length. There are various other topics; that is the
1974 most significant.

Mr. Boland: I think, Your Honor, we shall have to object to her qualifications on the ground that she is not qualified to practice law in Germany.

The Court: I do not think that would be necessary.

Mr. Boland: I think it would be an important element.

The court: Nonadmission to practice might be taken by a lawyer here in this country to mean that one might know more law than all of us.

Mr. Boland: That may well be.

The Court: She evidently has had a pretty good background of study and experience in German law. I think certainly on foreign exchange she is an expert. She has qualified on that.

By The Court:

Q. What has been your experience in regard to the study of these usufruct provisions? What has been your experience along that line? A. Well, my own study and my own teaching experience.

Q. You had that up in connection with comparative law studies? A. Oh, yes, yes.

Q. In other words, you made these comparative law studies, and you studied conflict of laws in connection with that? A. Yes, Your Honor.

1975 The Court: I think she has made out a prima facie case as an expert.

Mr. Boland: I will keep that in mind.

The Court: It may be later on that you can argue she does not know as much as others. We will see about that. But I think she has made out a prima facie case as an expert. I will permit her to testify. You may call my attention to any specific subjects on which you think she is not qualified.

Mr. Boland: I will, Your Honor.

By Mr. Burling:

Q. Now, Miss Schoch, will you go back to the question of the abmeldung which you filed in 1934, or which you think—I correct myself—either you filed or you think your mother filed with the police? Will you state what an abmeldung was and who was required to file it and under what circumstances, as a matter of German law? A. The abmeldung was a part of the police registration system, and the abmeldung, or the report out, or the checking out, had to be filed by anybody who left his abode inside Germany for more than a brief temporary absence. For instance, when I went to study in the University of Munich, I had to report out to the police at Wurzburg, where I was living at the time; and 1976 when I left the University of Munich to return to Wurzburg, I had again to file this ameldung; and the same was true when I left for the United States.

Q. In other words, an abmeldung was a document which you had to file when you left for any considerable period, whether or not you intended to return to the place which you were leaving; is that correct? A. That is correct.

Q. And it was not confined solely to persons intending to leave forever? A. Oh, no.

Q. Now, are you familiar with the regulations, orders, and statutes relating to foreign exchange control which were promulgated by the German Government? A. Yes, I am.

Q. Addressing your attention to a period before the summer of 1931 and not going back beyond the 1924 inflation, what controls were there on the possession of foreign exchange or foreign securities by German residents? A. There were no such controls.

Q. That is to say, a man residing in Germany could own American securities or American dollars in an American bank without any requirement for control? A. Yes.

Q. When was the first control imposed on such
1977 possession of foreign exchange or foreign securities?
A. On the 15th of July, 1931.

Q. Did the imposition of those controls follow any particular governmental problem or governmental event? A. The followed upon the bank holiday which had been declared on the 13th of July, due to the financial collapse of Germany.

Q. Did any particular bank collapse at this time? A. Yes; one of the leading banks of Germany.

Q. By the way, on July 15, 1931, do you recall who was President of Germany? A. Hindenburg.

Q. Who was Chancellor? A. Bruening was Chancellor.

Q. That was not a part of the Nazi regime, was it? A. No.

Q. What was the Constitution of Germany at this time? Can you name it? A. The Weimar Constitution.

Q. Was there any article of the Weimar Constitution which gave the Chancellor or the Reichspresident power to impose to emergency decrees? A. Article 48 of the Weimar Constitution enabled the President to issue emergency decrees permitting the ordinary legislative courses.

1978 Q. What was the general nature of the decree of July 15, 1931? A. Well, the first decree issued by the President was a decree enabling the government of the Reich to issue legislation—orders—regulating foreign currency.

Q. In other words, on July 15, 1931, President Hindenburg exercised his powers under Article 48 of the Weimar Constitution to authorize the Government to issue emergency decrees on this subject; is that correct? A. Yes.

Q. Will you state, if you know, what the definition of the term "foreign exchange" was for the purposes of the German foreign exchange control regulation? A. Foreign exchange was defined, I think, for the first time in the July 15 decree as foreign currency, including checks and bills of exchange, claims payable in foreign currency, foreign securities, precious metals, particularly gold. I think that was the definition in July, 1931, if I remember correctly.

(A document was marked as Defendant's Exhibit 113 for identification.)

By Mr. Burling:

Q. I show you Defendant's Exhibit 113-A and ask you if you recognize this as a photostat of the Reichsgesetzblatt. A. Yes.

1979 Q. For October 2nd—including an order issued October 2, 1931? A. Yes. This is the joint order issued by the Reich Minister of Finance and the Reich Minister of Economic Affairs, containing rules and regulations, number 6 implementing the decree of the Reichspresident concerning foreign exchange controls.

The decree referred to is a decree of August 1, 1931, which formed the basis for subsequent rules and regulations.

Q. I ask you specifically to state what the definition of foreign exchange was as provided in this order. A. I find in Section 1 the following definition: Foreign currency; claims payable in foreign currency; foreign securities acquired after July 12, 1931, and German securities

payable in a foreign currency which are not admitted in a German exchange; gold. That is all.

Mr. Burling: If Your Honor please, we are able to locate only the English copy of Defendant's Exhibit 31. It is the Reichsgesetzblatt containing the decree of August 1, 1931.

Do you agree that we may proceed with it? I do not believe there is any doubt about the authenticity of the document. Professor Kronstein identified it in English and in German; but the German seems to be missing at the moment. I ask Your Honor's permission to proceed
1980 with this.

The Court: All right.

By Mr. Burling:

Q. No, I offer in evidence Defendant's Exhibit 113-A, and I ask you to examine Defendant's Exhibit 31 and state if that is a translation of the order of August 1, 1931. A. Yes.

Q. Are you familiar with the terms of that presidential order? A. Yes, I am.

Q. Now following the orders of August 1, 1931, and October 2— A. This is October 2.

Q. (Continuing) and the order of October 2, 1931, to whom were the regulations regarding possession of foreign exchange applicable as a matter of German law? A. This legislation and these rules were applicable to German residents.

Q. Will you state what was meant by "a German resident," if you know? A. A German resident was a person who had his home, his place of living, inside Germany; or a corporation which had its place of management in Germany.

Q. What relevancy, if any, did citizenship have
1981 to those regulations? A. None whatsoever.

Q. Was a person who was a German national,

but who was physically living outside of Germany, subjected to the regulations? A. No; he was not a resident in the meaning of those regulations.

Mr. Boland: By "a national," do you mean a citizen?
Mr. Burling: A citizen.
Mr. Boland: Yes; of course.

By Mr. Burling:

Q. Is there a phase in German law governing a person who was subject to the foreign exchange regulations? A. The foreign exchange laws distinguished between inlander and auslander, and the expression generally used was devisen auslander and devisen inlander.

Q. Will you state the definition of each of those terms? A. A devisen auslander was the person residing outside of Germany and not subject to the foreign exchange control laws. A devisen inlander was a person residing in Germany and subject to this legislation.

Q. On and after October 2, 1931, will you state what the obligation of a devisen inlander was with respect to foreign exchange or foreign securities which he might
1982 happen to hold or own? A. Beginning on October 2, 1931, a German resident was under an obligation to tender to the Reichsbank any foreign exchange that he had or acquired within three days after acquiring such foreign exchange. He had to tender it to the Reichsbank for conversion into reichsmarks.

Q. Will you take the hypothesis that a German resident, a devisen inlander, had, let us say, a thousand shares of General Motors stock situated in a bank in the United States. His obligation would be what? A. His obligation would be to report and tender these foreign securities to the Reichsbank.

Q. Assume that the Reichsbank then acquired the securities from him. Was the law that the Reichsbank was to

pay in dollars or in marks? A. The Reichsbank paid the equivalent in reichsmarks.

Q. That is to say, if a devisen inlander complied with the law and tendered a thousand shares of General Motors stock, the Reichsbank would be required to offer him the price of the stock calculated in marks and deposit to his account or otherwise pay him marks; is that correct? A. Yes.

By The Court:

Q. What was that date? A. October 2, 1931.

Mr. Burling: I am not sure whether I have
1983 already offered Defendant's Exhibit 31. I now do, Your Honor. That is the order of October 2, 1931.

(Defendant's Exhibit 31 was offered in evidence.)

By Mr. Burling:

Q. Was there any order promulgated which defined the obligation of the Reichsbank; that is to say, what it was to do when the securities were tendered? A. I think the obligation of the Reichsbank was first defined in the executive order of July 18, 1931.

Q. I now show you Defendant's Exhibit 114-A and ask you if that is the executive order to which you have reference. A. Yes, that is the executive order of the Reichspresident to prevent flight of capital and tax evasion, of July 18, 1931.

Q. Will you state what the criterion was which the Reichsbank was directed to observe in determining whether or not to acquire foreign securities against marks? A. A person subject to the duty to tender could apply to the Reichsbank for permission to keep such foreign assets on the ground that those foreign assets or this foreign exchange was required for purposes which were justifiable

from the point of view of the German economy, and the Reichsbank was authorized to make that determination and grant such permission.

1984 Q. In other words, if the Reichsbank found, on the basis of the showing of the devisen inlander, that it would be useful to the German economy to permit him to hold his foreign securities, then the Reichsbank could do so? A. Yes.

Q. But if that showing was not made, then the Reichsbank was directed to acquire securities against mark payment; is that correct? A. Yes.

Q. I ask you to assume this hypothesis: Suppose that A, a devisen inlander, had a thousand shares of General Motors stock held by a New York Bank. Then suppose that the devisen inlander went to the Reichsbank and said, "I wish to hold these shares, because I think the mark may become inflated or otherwise valueless, and I would prefer to have my securities abroad." Would that have been a showing sufficient to satisfy the executive order of July 18? A. No, definitely not.

Q. In other words, a showing by a German resident that he was afraid that the German economy might collapse and, therefore, wanted his capital abroad would not be enough? A. No, because the purpose of this decree was precisely to prevent the flight of capital abroad and

1985 to obtain for the Reich the benefit of all German-owned foreign exchange and foreign assets.

Q. A little more specifically, it is correct, is it not, that a dollar account in a New York bank would be regarded as foreign exchange for the purpose of those regulations? A. Yes.

It is also correct, is it not, that shares of stock in American corporations would be regarded as foreign exchange for the purpose of those regulations? A. Yes.

Q. That is true of shares of a Swiss holding company, is it not? A. Yes.

Q. Is it not also correct that a German citizen or

national— I take it the words are interchangeable—who did not reside in Germany had no obligation whatever to tender foreign exchange to the Reichsbank? A. That is correct.

Q. Now, let us suppose that on October 2, 1931, a person who was resident in Germany decided that he wanted to keep or take his assets outside of Germany because he was afraid that the German economy might collapse. Could he do so under the terms of the regulations without tendering the assets to the Reichsbank? A. He could not
1986 transfer his German holdings into foreign exchange and thus transfer them outside of Germany, with the exception of a very small exempt amount.

Q. What was that exemption? Do you remember? A. I think at first the exemption was 20,000 reichsmarks. By October 31 it was lowered to 200 reichsmarks.

Q. In any event, it was nothing like 15,000,000 reichsmarks, was it? A. No.

Q. Will you explain why if someone who was a German resident had foreign exchange he could not move outside of Germany and thereby become a devisen auslander and thereby avoid the regulations? A. He could move outside of Germany if he decided that he wasn't going back to Germany and that he was willing to leave his German assets behind, which might be confiscated by the Reich as a fine for his failure to report these foreign assets and tender his foreign exchange.

Q. But, as a matter of German law, you could not leave Germany and become a devisen auslander if once you were a devisen inlander; is that correct? That is to say, a man who on October 2, 1931, was a resident of Germany could not avoid the effect of the regulations by departing from Germany; is that correct? A. No.
1987 Q. Will you explain that, please? A. The obligation to tender his foreign exchange to the Reichsbank was immediately; and if he was still in Germany at the time that this decree entered into effect, he was

under that obligation, and failure to comply would have made him liable to penalties?

Q. So if we assume that a man on October 2, 1931, who was residing in Germany had the equivalent of 15,000,000 marks in New York and perhaps another 20,000,000 inside Germany, he could not move out to save the 15,000,000 without sacrificing the 20,000,000; is that correct? A. Yes.

Q. I wish to direct your attention to another problem of the German law. Are you familiar with the German Civil Code? A. Yes, I think I am.

Q. Have you ever studied it? A. Yes, I have.

Q. In fact for many years; is that correct? A. Yes.

Q. Are you familiar with Section 117 of the Code? A. Yes. That is a section which deals with sham transactions.

Q. What is the German title of Section 117? A. 1988 Section 117 speaks of scheingeschaeft.

Q. Do you have any difficulty of any sort in translating that word? A. No. I translate as "sham transaction."

Q. What does the German Civil Code provide with respect to sham transactions? A. It provides, if I may give a rough translation, that where a declaration of intention which is to be made towards another person is, with the consent of that person or in agreement with that person, a sham, it is void.

Q. I want to ask you a hypothetical question. Suppose that in 1931 I had been of legal age in Germany. Suppose my father had said to me, "I am going to purport to give you $3,700,000. But it is to be understood by both of us that it is not a real gift but merely a device of getting around the foreign exchange regulations. You invest the money and take 20 per cent of the income as a fee, but understand that the money is really mine."

Then suppose that a formal deed of gift had been prepared. I will ask you: Would title have passed to the money? A. If I agreed with you that what was being done was not intended, then title would not have passed. The purported transaction would be null and void.

Q. That is true even if there was a formal written
1989 agreement executed by the parties; is that correct?
A. Yes.

Q. Did you hear Professor Kronstein testify concerning Section 117 of the German Civil Code? A. I did.

Q. Did you hear him testify that the German courts would be extremely loathe to find that an agreement which was reduced to a formal writing was in fact a sham transaction? A. I don't agree with him on that.

Q. I mean did you hear him state that? A. Yes, I did.

Q. Now I will ask you: Did you agree with Professor Kronstein on that point? A. I did not agree with him on that point.

Mr. Boland: Is this an answer coming from the reading of cases or from actual experience? It seems to me it might involve a mixture of reading of cases and of experience.

The Court: She has familiarized herself with interpretations; but you can bring out any weaknesses you may find.

By Mr. Burling:

Q. Can you answer my question? A. What was the last question?

1990 Mr. Burling: Would you read the last question, Mr. Reporter, please?

The Reporter (reading): "Now I will ask you: Did you agree with Professor Kronstein on that point?"

The Witness: I said that I did not agree with him on that point.

By Mr. Burling:

Q. Will you explain why you do not agree with him and what your own view is, please? A. I do not agree with

him for the reason that there are a large amount of cases in which the courts do find that, as a matter of fact, the parties did not intend the purported transaction, which as a rule is incorporated in a written document, and declare that it was null and void.

Q. Do you have the citations of any cases in the German courts in which transactions embodied in written instruments have been declared sham under Section 117 of the Code? A. Well, there is one form of sham transaction which was not uncommon where the transaction was incorporated in a notarized instrument. Those were cases of contracts for the sale of real property, where the parties in order to save taxes—stamp taxes and other taxes—stated the price at a lower amount than the actual amount agreed upon. Those contracts were notarized docu-
1991 ments, solemn documents, and yet there is quite a line of cases in which the German courts held such contracts void because one essential, namely, the price, was not stated correctly.

Q. Do you have any citations available to you, either with you or in your possession? A. I have some citations, if I may look them up, on this particular type of transaction.

Three citations from the official collection of decisions of the German Supreme Court: Volume 78, page 115; Volume 94, page 147; Volume 104, page 102.

Also a decision of the Supreme Court published in the Leipziger Zeitschrift for 1924, page 546, where the court mentions a consistent line of decisions established by this court—that is, a consistent line of decisions which held such contracts null and void. This is only one type of transactions which the courts held void under 117.

There is a great number of other instances. I cannot claim that I have read all the decisions because I think there are far too many. I think I have with me a compilation on sham transactions—a compilation and discussion

of cases of sham transactions—published by an attorney and notary in Berlin in 1931. The author is Albert Baer. This little compilation contains a great many illustrations of sham transactions.

Mr. Burling: If Your Honor please, this is a book
1992 that comes from the Library of Congress. I cannot make it a permanent part of the exhibits in this case. I ask leave to have it marked for identification. I will hand it to counsel.

The Court: Very well.

(The book referred to was marked as Defendant's Exhibit 115 for identification.)

By the Court:

Q. I think maybe I interpreted Dr. Kronstein's testimony a little different from the way you did. Maybe you can help me a little on it. I rather understood or gathered from his testimony that the German courts would require a clear and convincing testimony when a solemn document appeared, such as we sometimes require over here in this country before we will require specific performance, and the like. We have to have clear, convincing testimony. That does not mean you cannot prove sham, as I understand, but they would want rather clear testimony. Did you find the rule contrary to that, or am I mistaken about that? A. Well, surely, it is a question of evidence; but the evidence that the courts take into consideration is an examination of all the surrounding circumstances.

Q. Surely; they do in any court. But what I understood him to say, now, was, like we have over here,
1993 that certain types of cases, as you probably know from your study of comparative law, are in common law governed by rule of practice or rule of law—that even when he does investigate, the evidence has to be clear and

convincing. A. No, there is no such technical rule of evidence in the German law.

Q. What I was wondering was if you found anything like that in any of the cases on it.

Mr. Burling: I don't believe the positions of the parties are very far apart; it is a matter of degree rather than principle.

The Court: I know, but there is in this country a provision with regard to certain types of cases that the evidence has to reach that height. The appellate courts sometimes reverse them if they do not reach that height. I do not know whether that is true in this case or not. You have a solemn document, and you have the person appear before a notary or some court official. I don't know whether the courts regard that as having any particular weight which requires a certain type of clear testimony to overcome it, or whether it is just the ordinary case. That is what I am trying to find out. I understood her to say she had not found any such expression in the German authorities.

1994 The Witness: There isn't any such special technical rule in Germany.

The Court: That is what I am talking about.

Mr. Burling: Thank you, Your Honor. You have clarified a point which I myself missed.

By Mr. Burling:

Q. Miss Schoch, I refer you to Defendant's Exhibit 115 as being a book relating to the cases on sham transactions for the purposes of Section 117 of the German Civil Code. A. Yes.

Mr. Burling: I hand it to counsel.

By Mr. Burling:

Q. Are you familiar with the process which a German court would employ in determining whether a particular agreement was or was not a sham transaction? What evidence or what considerations would the court weigh? A. The Court would take into account all the circumstances surrounding the transaction—that is, the relationship of the parties, the circumstances, time and place when the purported transaction was gone through, the subsequent conduct of the parties.

Q. Specifically, let us suppose the hypothesis that a German court were considering whether or not a particular gift—that is, a transfer between father and son—was intended as a bona fide gift by the parties, or whether
1995 it was intended merely as a dodge by which the son, being a devisen auslander, could hold foreign securities for his father, who was a devisen inlander, and thereby avoid the necessity of turning over the securities to the Reichsbank for conversion into marks. Would the court first consider the relationship between the parties—whether it was cordial or uncordial? A. It would certainly consider that.

Q. Would it consider evidence concerning the motives of the father for transferring the property to the son rather than tendering the property to the Reichsbank? A. Yes.

Mr. Boland: Your Honor, I do not mean to bring this up continuously; however, it seems to me, from what I have read on this subject, that foreign law is a matter of fact, and this witness cannot testify as to what the court cases say or what the German Code says. If she has cases to back this up, I have no objection.

The Court: That might be true unless she has practiced in the courts.

Mr. Boland: Without having had any practice, for her to state what the court is going to consider is highly speculative.

The Court: I should be surprised if they would not consider that, however.

1996 Mr. Boland: I doubt if she can testify.

The Court: I have some doubt about that.

Mr. Burling: If Your Honor please—

The Court: I am willing to hear you on it. If she had not had experience in the courts and had not had decisions on the subject, it might be speculative for her to say what they would receive.

Mr. Burling: A very considerable part of my argument on this point would relate to the great latitude which Your Honor gave Professor Kronstein, who testified as to how he would interpret particular documents.

Mr. Boland: Your Honor, he was qualified as having had many, many years of experience.

The Court: I understood that he actually practiced in the courts. If she says she has heard the courts rule and has had actual experience in the courts, that is different. I do not know that German textbooks on evidence would say whether you take into account the relationship of parties, or things like that. I doubt that.

Mr. Burling: May I inquire to see whether she is qualified?

The Court: If there is any textbook on it that is based on her experience in court, that might be different.

1997 Mr. Burling: I submit, as a basis for the questions I am about to ask, that this a question fundamentally of jurisprudence; that is, how does a German court go about determining a particular question? And if she is experienced in jurisprudence and if she has worked on jurisprudence—

The Court: You asked her to take into account the relation of father and son. I doubt if you would find that in any book. I doubt if you would find that ruled on by a

court one in a hundred times, so I am a little bit inclined to think that, as a technical expert, you are getting a little out of the domain of what we are considering. I would very much doubt if a court would do it. I cannot think of any court in the world that would take that into account.

Mr. Burling: I won't press the point. However, it seems to me Your Honor will have to do in this case what I wanted to bring out from this witness a German court can do.

The Court: I think certain types of testimony in relation to a sham will be admitted in every court in the world, unless the contrary is shown. I certainly think that must be the law, unless the contrary is shown. Now, if you have any rules of law to the contrary, that is different.

Mr. Burling: I won't take up Your Honor's time. I will proceed.

The Court: Do you agree with me on that, Mr. Boland, that the ordinary matters to be considered in con-
1998 nection with an alleged sham transaction would be considered by every court, that any abnormal situation to attempt to show sham would go in in any court, unless there is a rule to the contrary?

Mr. Boland: I think so, to find out whether there was an agreement other than the agreement which was formalized.

The Court: And motives.

Mr. Boland: And motives.

The Court: And motives of foreign exchange, father and so on bad feeling, whether he shot at him the week before, or something like that. They are obvious in every case we have, unless you have some peculiar country that we do not know anything about.

The reason I am sustaining the objection is not that I think the testimony is mistaken, but I think it is obvious and it is not a matter for expert testimony. If you want to argue that that is not so and that there is some law to the contrary, then I think I ought to consider whether I

ought to consider it or not. I do not think Dr. Konstein testified on that.

Mr. Boland: No.

The Court: If we are going to have any contest on that point—

Mr. Boland: We can handle it in rebuttal.

The Court: If you are going to call him on that, I think I will have to consider whether I will let her testify in surrebuttal. That is not in the case now, however.

Mr. Burling: Yes, Your Honor.

By Mr. Burling:

Q. Have you examined Plaintiff's Exhibit 5, Miss Schoch (handing a document to the witness)? A. Yes, I have.

Mr. Burling: If Your Honor please, this is the gift agreement itself.

By Mr. Burling:

Q. Have I requested you to go over it with great care? A. Yes, you have.

Q. And have you done so? A. Yes, I have.

Q. Now, can you tell, from examining the face of the instrument itself, whether or not the document is a sham or is a bona fide gift agreement? A. On the face of the document, you cannot tell either.

Q. And you would not expect, would you, to have the words "sham transaction" written at the head of a transaction which was in fact a sham? A. No; I would not expect any words in such an agreement to indicate the counter intention of the parties.

Q. Now, I ask you to assume that on October 5, 1931, Wilhelm von Opel said to his son, Fritz von Opel, that Wilhelm would make a gift of the 600

Opel shares which are referred to in this document at a later date, but that there was not time enough to prepare a gift agreement because it was necessary for Fritz von Opel to leave Germany the next day for America and to negotiate with General Motors, and that when Fritz von Opel returned to Germany thereafter a gift agreement would then be drawn up and predated to the date October 5, and I ask you to assume further that Fritz von Opel did then proceed to America and, under a power of attorney, did sell the shares to General Motors and then did return to Germany, and in November, 1931, this instrument was drawn up and dated October 5, 1931.

Now, on that assumption, and examining the document, would or would not title to anything pass from Wilhelm to Fritz von Opel upon the execution of the instrument? A. May I just ask you, I am to assume that the instrument was executed in November after the Opel shares had been sold?

Q. After the Opel shares had been sold to General Motors and General Motors had paid some dollars, some shares of General Motors stock, and was obligated to make an additional payment in dollars. A. On that assumption, the gift would be a gift of foreign exchange and foreign securities. Such a gift would have required a li-
2001 cense from the German Government. In the absence of such license, the gift would have been void.

Q. So that if we assume also that no license to make a gift of foreign exchange was obtained, then the transaction would be totally void; is that correct? A. Yes.

Q. Pursuant to what section of what executive order, if you know? A. I think it was section 12 of—I would like to look it up—of the August 1st decree—yes; section 12 of the decree of August 1st, 1931, a provision which was repeated in subsequent consolidating laws.

Q. So that if you assume that Plaintiff's Exhibit 5, which is the purported gift agreement of October 5, 1931, was not signed until November, 1931, and if you assume

also that no license was obtained by Wilhelm von Opel to make a gift of foreign exchange to his son, then the transaction would be void whether or not it was sham or whether it was intended as a bona fide gift? A. Yes.

Q. Assume that there was no license. Then, under any hypothesis, as soon as the instrument was signed in November it was void; is that correct? A. Yes.

The Court: I am a little confused on this October
2002 5 date, as between that and October 17.

By the Court:

Q. Would it still be void if executed on the 5th? A. Provided that the object of the gift was foreign exchange or foreign securities. That was Mr. Burling's assumption.

Q. I would like you to make this assumption now. Assume that this is a perfectly bona fide transaction on October 5. A. Yes.

Q. Would that be valid? A. It would be valid, because the object of the gift was German securities, and German securities were not subject at that time to foreign exchange regulations. Mr. Burling made the assumption that they had been changed into foreign securities or foreign currency.

The Court: I understand that.

Mr. Burling: The relevance of my line of inquiry, if Your Honor please, is that the testimony has been that on October 17 the 600 Opel shares were converted—

The Court: I understand that. I had not gotten clearly in my mind that up until October 17 these were German securities.

By the Court:

Q. Being German securities, their location did not
2003 make any difference? He could still transfer them?

A. He could still transfer them. It was much later—

Q. They were in Reichsmarks, anyway? A. Yes.

The Court: All right.

The Witness: It was only in 1938 that the transfer of German securities to a foreign residence was subject to this section.

The Court: That clears up what I had in mind. You go ahead.

By Mr. Burling:

Q. Now, whether or not the gift agreement was signed in October or November, if it was a sham it did not operate to pass title; is that correct? A. Yes.

Q. And assuming, on the contrary, that it was not signed until November, then it would not operate to pass title, either, under the assumptions that I have given you? A. Yes.

Q. Because in November the object of the gift had been converted into foreign exchange? A. Yes.

Q. Now, for the rest of your testimony, Miss Schoch, I ask you to assume that the gift was not a sham but was intended by the parties as a bona fide gift. Now, first assume also that it was executed on October 5 and, leaving a reservation which I will come to in a moment, is it correct that you would believe, by examining the document, that if it was in fact executed on that date and was intended as a bona fide gift agreement, it would act to pass title from Wilhelm and Marta von Opel to Fritz von Opel of 600 shares of Opel stock? A. Yes, I would come to that conclusion, with a reservation.

Q. Now, will you explain what the reservation is? A. The reservation is the following. The agreement provides that the usufruct in the shares is not assigned to Fritz von Opel. It remains with Wilhelm von Opel and his wife. This, it seems to me, points to an intention of the parties to establish a usufruct in the shares in and by this agreement.

Q. That is, immediately? Is that right? A. Yes. From the wording of the agreement, that is the way I interpret it.

Mr. Boland: Your Honor, again I have got to bring up this problem. Are you interpreting this on the basis of cases in Germany or are you interpreting this on the basis of your experience, Miss Schoch?

Mr. Burling: Just a moment. If there is an objection, it should be addressed to His Honor. You are not
2005 examining her.

Mr. Boland: Your Honor, I address the objection to you.

The Court: As I understand it, if she has had experience with this and studied the law with relation to usufruct and compared it with the law of other nations, which means, evidently, that she has given it a very careful study, her interpretation of it would be permissible, I should think.

Mr. Boland: Well, I did not gather, from her qualifications specifically, that in her studies of comparative and international law she specifically took usufruct.

The Court: I asked her that.

The Witness: That was part of my studies. I did not specialize in the subject of usufruct.

Mr. Boland: I did not gather that that was her main effort.

Mr. Burling: I did not hear Mr. Kronstein say that he was a specialist in usufruct problems, nor is there a lawyer alive who is.

The Court: I think you may develop on cross-examination as to the weight of it, but I think I will permit her to answer.

Mr. Burling: I do not mean to argue after your Honor's ruling. My particular purpose in offering this is in direct rebuttal to Professor Kronstein's construction. He testi-

fied at some length as to his hypothesis of how he would read this.

2006 The Court: I understood that.

By Mr. Burling:

Q. Will you proceed, Miss Schoch? A. As I said, the language of the document is in present terms, and my first reaction, seeing nothing but the document—

Q. I am asking you to assume nothing beyond what I have already given you. A. —that the parties intended to establish a usufruct in the shares then and there.

Now, of course, as has been pointed out, there is no provision of reassignment of possession, so that in the absence of this technical requirement of German law, no usufruct was established by this instrument.

The question then arises—and that is the reservation I wanted to make—whether the usufruct did not constitute such an essential part of the gift that, due to the failure of the usufruct, the entire gift would fail.

Q. Will you explain why the entire gift might fail if the usufruct failed? Will you state what section of the German Code you have reference to? A. Under section 139 of the German Civil Code, a transaction is void if an essential part of the transaction is void and if, without that essential part, the entire transaction could not have been made.

2007 It reads:

"Where a part of a legal transaction is void, the entire transaction is void unless it can be assumed that it would have been made without the void part."

Q. So that if you add to the assumptions I have previously given you the assumption that Wilhelm von Opel insisted upon the usufruct provisions, then, as a matter of German law, if the usufruct failed, the entire gift would fail and title would remain in Wilhelm von Opel; is that correct? A. Yes.

Q. And that is the result you come to if you had no assistance other than the four corners of the instrument itself plus the assumptions I have already stated? A. Yes.

Q. Now, you have used the word "usufruct." In German the word used in the instrument is "niessbrauch," is it not? A. Yes.

Q. Do you have any difficulty in translating the word "niessbrauch" into English? A. No, I have not.

Q. Have you examined any dictionaries or lexicons of German and English dictionaries? A. Well, I have examined the standard German-English and English-German dictionaries, and they translate "niessbrauch" by "usufruct," and vice versa.

2008 Q. That is, the dictionaries indicate that the proper translation of the word "niessbrauch" is the word "usufruct"; is that correct? A. Yes. One or two of them also add the word "use."

Q. Now, did you hear Professor Kronstein refer to an article in the Columbia Law Review by a Professor Nussbaum? A. Yes, I remember that.

Q. Have you examined that article at my request? A. Yes, I have.

Q. Does that article contain a translation of the German word "niessbrauch"? A. No, it does not.

Q. Does it use the word "usufruct"? A. Yes, and in passing, I would say.

Q. Does it refer to the German concept of usufruct? A. No, it does not.

Q. I see. Now, are there any standard English language translations of the German Civil Code? A. There are two translations of the German Civil Code; one by Loewy and another by a man named Wang.

Q. Now, how do these two standard translations deal with the word "niessbrauch"? A. They use the term "usufruct."

Q. Now, you heard Dr. Kronstein testify, did you not, concerning the origins of the German law? A. Yes.

2009 Q. And do you not agree with him that there are many elements of the German law which are derived from Germanic law and not the Roman law? A. Speaking about the present day of the German Civil Code and the other German Code, yes.

Q. I address your attention specifically to the problem of the use of usufruct. Can you state where that concept came from in the present German law? Where is it derived from? A. In my opinion, the concept of usufruct in the present German law is derived from and based upon the Roman concept of usufruct.

Q. Do you think this is a matter which is open to doubt or is it a matter that you have a very clear and fixed opinion on?

Mr. Boland: I object, Your Honor. I do not see what Roman law has to do with the problem before the Court.

Mr. Burling: I am not going on more than a few more questions.

The Court: Very well.

Mr. Burling: I want to bring out that the present correct definition of the term "niessbrauch" is contained in the Justinian Code, if Your Honor please, to cast light on what the correct interpretation of the concept is. I

2010 can do it in just a moment, if Your Honor will bear with me.

By Mr. Burling:

Q. Will you answer the question, please? Do you recall the question?

The Court: The question was whether there is any doubt about it. I do not have that before me. That may be objectionable.

Mr. Burling: I will withdraw the question.

By Mr. Burling:

Q. Did you hear Dr. Kronstein refer to his teacher, Martin Wolff? A. Yes, I did.

Q. Who is Wolff? A. Martin Wolff was a professor in the law faculty of Berlin. He was one of the leading authorities in Germany, and he was the author of a textbook of high standing on the German law.

Q. Would it be correct to say that Wolff occupied a position as a textbook writer in German law comparable to that of Wigmore or Williston in American law? A. Yes, I would say so.

Q. Have you examined his textbook with respect to what he says about the concept of usufruct? A. Yes, I have, and I find that--

Q. Have you brought with you this volume? A.
2011 I have the volume with me, and I find that Martin Wolff explains that niessbrauch—

Q. Will you examine, I think it is page 343, and state whether I am correctly translating into English?

"Niessbrauch is a right in rem to use a piece of property in every respect, without, however, having the right to transfer, dispose, or destroy the substance"?

A. Yes. That is a translation of his first paragraph under the heading of "Usufruct."

Q. Now, will you look further and state whether I am correctly translating as follows:

"The modern law of niessbrauch is essentially formed after the pattern of the Roman and civil law. The concept of niessbrauch is entirely Roman. The definition given above corresponds to that of Paulus,"

And then there is a phrase in Latin which we will furnish the reporter:

"Usufructus est ius alienibus rebus utendi fruendi salva rerum substantia"?

A. Yes.

Q. To whom is the Latin attributed by Martin Wolff? A. To the Roman Jurist Paul, or Paulus, and the reference is to the digests which form part of the Justinian Code.

Q. Are you able to translate the Latin which I
2012 just read? A. Well, yes.

Q. Will you do so? A. It says, "Usufruct is the right to use and enjoy property owned by another, without, however, impairing its substance."

Q. Now, do you agree with Wolff that in German law a usufruct or niessbrauch is always a right in rem? A. Yes.

Q. Is there any such thing, as a matter of technical German law, as an in personam niessbrauch? A. No.

Q. Now, would you state whether it is your opinion that any trained German lawyer knows that a usufruct is a right in rem? A. That is my opinion.

Q. Would you state whether, in your opinion, a trained, experienced German lawyer using the word 'usufruct" would intend to refer to a right in rem?

Mr. Boland: Before she answers that, same objection.

The Court: Well, I think that is getting a little too far. I will sustain the objection.

Mr. Burling: I will withdraw the question.

By Mr. Burling:

Q. Would it be possible to have an in personam right or claim to enable someone else to create a usufruct in
2013 the future? A. Oh, yes, that is entirely possible.

Q. Is a right properly called a usufruct? A. No. Such a right is a claim for the creation of a usufruct.

Q. Now, you have taught comparative law, have you not? A. Yes.

Q. I want to ask you a question on comparative law. Would the analogy between a right in the future to require

someone to create a usufruct and a usufruct be equivalent to the right in the future to contract a marriage and a present marriage? A. Well, yes. The one is a marriage and the other is—

Q. A future contract to marry? A. Yes. That is a parallel, except, of course, when it comes to specific performance.

Q. Well, with the exception of that, there is as much difference between an agreement and a marriage as there is between the right to call upon someone in the future to create a usufruct and a usufruct itself; is that right? A. Yes.

Q. Now, I want to ask you another question on comparative law. Are you familiar with the fact that in our law here the courts employ what are called canons of construction? A. Yes.

2014 Q. Are there any canons or rules of construction which are employed in German courts? A. Yes.

Q. Now, with respect to the specific question of the construction of a written instrument, can you state whether you are familiar with the kinds of construction employed in German courts? A. Yes, I think I am.

Q. Are they approximately similar to or are they very different from the rules of construction which an American court would employ? A. I would say that they are not basically different.

By the Court:

Q. Not what? A. Not basically different.

By Mr. Burling:

Q. Is there any rule of construction which as a matter of law a German court would employ in construing a written instrument with respect to what the words of the instrument are? A. Well, I think my friend Kronstein has

explained in his testimony that a court would first use the so-called objective test—that is, it would look to what the parties say and it would look to the natural, accepted, customary meaning of words, and it would look to the
2015 technical meaning of technical expressions.

Q. Now, will you look at Plaintiff's Exhibit 5 once more and state whether the parties say they intend to create a usufruct to be enjoyed by Wilhelm and Marta von Opel or whether they intend to create a claim under which at some point in the future Wilhelm and Marta von Opel might require Fritz von Opel to set up a usufruct? A. The parties say that the usufruct is not assigned, but that it remains with the Opel parents. That to me expresses an intention to establish a usufruct right then and there.

Q. As a matter of German law, are the words relating to usufruct ambiguous or unambiguous? A. The words of this instrument?

Q. Yes. A. I think they are unambiguous.

Q. Again assume that there is no circumstances or showing that this is a sham transaction. Assume it is bona fide. Is there any word or words in the instrument itself which would require or justify a German court in going beyond the words contained in the instrument and looking elsewhere for assistance in construing it? A. I did not quite understand your question, sir.

Q Again assuming for the moment that this gift agreement is bona fide, that the parties intended to make
2016 a gift on October 5, 1931, is there any word or words employed in the instrument itself which create any ambiguity or doubt sufficient to justify a German court in going outside of the instrument in order to construe it? A. I don't think so.

Q. Are you aware of any different rule in the German court than the rule which this Court would apply in determining whether to look beyond the four corners of a written instrument in construing it? A. No. I think the Court here would apply the same criterion.

Q. And will you state what the plain and unambiguous language of the instrument is with relation to the usufruct? A. In my opinion, the plain expression of the instrument is that a usufruct is to remain with the Opel parents.

Q. And that is a right in rem? A. That would be a right in rem.

Q. And yet there is no redelivery? A. No. Therefore, the right in rem has not come into being in this instrument.

Q. If I told you as a hypothesis that the instrument was prepared in about a half an hour, under conditions of great haste and in a hectic atmosphere, would you assume from the instrument that a usufruct was intended or would you assume that some other result was intended?

2017 A. I would assume that a usufruct was intended, but that due to haste, the provision concerning the reassignment of possession was omitted.

Q. In other words, you would assume, on the assumptions that I have given you, that a technical lawyer's error had been committed; is that right? A. Yes.

Q. And under section 139 of the Civil Code, the result of such an error would be the failure of the entire gift; is that correct? A. Yes, assuming that the usufruct forms an essential element of the gift.

By the Court:

Q. How should it have read? A. Well, the provision that was omitted would have been to the effect that Fritz von Opel reassigns to his parents the claim against the bank in New York for the delivery of the Opel shares.

Q. You had to say that notwithstanding that you say that you reserve the usufruct? A. If you want to create a usufruct then and there, you have to have a delivery of possession.

Q. Of course, this is a chose in action, not very tangible. The right to convey is the interest in the corporation, is

it not? What you convey by an instrument, when
2018 you convey an interest in the corporation, is just the interest in the corporation? The stock is simply evidence of it; isn't that right? A. Well—

Q. What I am trying to get at is, if you can convey it by the same instrument by which you convey a usufruct, do you have to have delivery there? A. Yes.

Q. You have to have delivery, in so many words, back? A. Yes, under the strict rules of German law.

The Court: I do not think that is American law. It may be German law. At least, I ruled the other way in a case I had.

We will adjourn now.

(At 3:35 p.m. an adjournment was taken until Wednesday, January 5, 1949, at 10 a.m.)

* * * * * *

2021 PROCEEDINGS

Thereupon—MAGDALENA SCHOCH resumed the stand and, having been previously duly sworn, testified further as follows:

By the Court:

Q. Let me get a little matter cleared up in my mind. When you speak of a delivery of stock and the necessity for delivery in order to complete this usufruct, you have in mind, I take it, the statement in the instrument itself of an assignment? Is that what you have in mind? That was the point I was really talking about when we adjourned last night. Do you have inclusion of the wording of assignment rather than actual delivery of the certificates themselves? Is that what you had in mind? A. Well, is a case where the stock is in the hands of a third person—for in-

stance, deposited with a bank—actual delivery can be replaced by the assignment of the claim which the owner has against the bank.

Q. In other words, if you say, "By this assignment I hereby assign all my right, title, and interest in and to that share of stock," that would suffice for the bringing into creation of a usufruct? A. You would have to say that,

"I deliver possession to you by assigning to you my
2022 claim against the bank."

Q. If you say you deliver possession in that language, then you do not actually have to hand over the certificate of stock itself? A. That is correct.

Q. That is what I was trying to get clear. All right.

What you would say was missing in this instrument was —in this so-called gift agreement, what you would say was missing, in so far as that reservation of title was concerned —what was missing was the wording that "I hereby assign or deliver—and/or deliver—possession of the certificates"? That is what was missing? A. What was missing were the words which delivered possession to the usufructuary.

Q. That is what I say. All there was was a reservation of an interest, but not words of delivery which constituted delivery or possession? A. Yes.

Mr. Burling: I should, first, merely for the record, like to have marked—and I offer it in evidence—Defendant's Exhibit 31-A, which is the German of the decree of August 1, 1931. We identified it in English yesterday, if Your Honor please. I offer it in evidence.

(Defendant's Exhibit 31-A was received in evi-
2023 dence.)

Direct Examination (resumed)

By Mr. Burling:

Q. Miss Schoch, you are suffering from a cold and have a hoarse voice? A. Yes; I have a cold and I ask the Court's indulgence.

Q. Now, did I correctly understand you to say yesterday at the close of your testimony that on the assumption that Plaintiff's Exhibit 5 is a bona fide instrument, that was intended to accomplish what it says on its face, and that it was in fact signed on October 5, 1931, and on the further assumption that it was hastily drawn up in a hectic atmosphere on that date, if you were merely to examine the instrument itself, you would conclude that what the parties intended to do was to make a gift reserving then and there a usufruct to Wilhelm and Marta von Opel, and that a technical lawyer's defect existed; and that on the further assumption that Wilhelm von Opel insisted upon the usufruct, then the entire gift failed for failure of an essential element of the gift pursuant to Section 139 of the Civil Code? A. Yes, that would be my conclusion.

Q. Did you hear Professor Kronstein testify to the general effect that under German law it is difficult or
2024 impossible to make a gift reserving then and there a usufruct, and that the most that can be done is to make a gift subject merely to a charge? A. That is what I understood from his testimony.

Q. Now, have you, since you heard him testify a month ago, looked at any cases decided by the Supreme Court of Germany on that point? A. Yes, I have.

Q. Have you found a case that bears on that point? A. I have found one case just decided by the Supreme Court in 1935, in which this is exactly what happened: that is, a gift of personal property was made by parents to their child with a usufruct in the property reserved to the parents.

Q. You refer, do you not; to the case decided on September 10, 1935, which is cited in 148 R. G. Z. 321-323? A. Yes, that is the case, in Volume 148 of the official collection.

Q. In that case, is it not true that parents made a gift of home furnishings to their daughter, who was a minor child? A. Yes.

Q. And that they by the instrument reserved to themselves a usufruct in the furnishings; is that correct? A. Yes.

2025 Q. Is it not also correct that thereafter creditors of the parents attached those furnishings? A. Yes.

Q. Am I right in thinking that the daughter then asserted that she had legal title to the property and that the attachment was void? A. Yes.

Q. Am I right also in thinking that two lower courts held that the daughter could not create a usufruct for the parents at the same time that the parents gave her the legal title? A. Yes, that is correct. The lower courts held that, first, a full transfer of title had to occur; then the daughter had to create a usufruct for the parents.

Q. And that was not what they had in fact done, on the facts of that case, was it? A. What they had in fact done was that they had executed one instrument in which the gift was made at the same time that the usufruct was reserved. No delivery of possession was necessary, because the parents already had possession. Therefore, everything could be done by this one agreement and in this one instrument.

Q. Miss Schoch, I am now just asking what the facts of the case are; I am not asking for the legal con-

2026 clusion yet.

The facts are that they made an instrument in which they purported to give to the daughter and to reserve the usufruct? A. Yes.

Q. The fact is that two different lower courts of Ger-

many held that you could not do that; that the usufruct failed; and that since the usufruct was an essential element of the transaction, the entire gift failed, and therefore the daughter had no title and no standing as against the creditors; is that right? A. Yes.

Q. In other words, two different lower courts of Germany applied the law as you understood Dr. Kronstein to state it; is that correct? A. Yes; I think that is what he said.

Q. What did the Supreme Court of Germany do when this case came up to it, with particular respect to the principle of law enunciated by Dr. Kronstein? A. The Supreme Court overruled the decisions of the lower courts and said that in cases of gifts of personal property with a reserved usufruct, the gift and the usufruct came into existence at the same time.

Q. The action of the court was to reverse the lower courts, which had applied Dr. Kronstein's principle; 2027 is that correct? A. Yes.

Q. Do you have the text of the opinion with you? A. I have a photostatic copy with me.

Q. I wish you would look at page 223 and tell me whether I am correctly translating from the German:

"Where personal property is involved and, as is the case here, the transfer of ownership and the creation of the usufruct are not only externally incorporated in one agreement, but where in addition both are inseparably connected in substance"—and then I will skip— A. Yes.

Q. So far the translation is correct? A. Yes.

Q. "The agreement between the minor and her parents concerning the creation of the usufruct had, therefore, a dual significance: on the one hand, as regards the creation of the usufruct; and on the other hand, as regards the transfer of title. Consequently, the two agreements embodied in one instrument had a dual result: acquisition of

title by the daughter and acquisition of the usufruct by the parents."

Then, skipping some:

"Accordingly, there is no possibility of separating
2028 the two legally relevant events. It cannot be said that the daughter only granted usufruct to her parents subsequently. Rather it must be said that she acquired only property which was burdened with a usufruct."

Is that what the Supreme Court of Germany said? A. Yes.

Q. Before I go on to a different topic, it is clear, is it not, that it would have been possible for the parents Opel to have given the 600 Opel shares to Fritz von Opel burdened by a usufruct which came into existence simultaneously and instantaneously? A. Yes; in my opinion, that would have been possible.

Q. That is what the Supreme Court of Germany held in the case we have just discussed? A. Yes.

Mr. Burling: May I have Plaintiff's Exhibits 7, 8 and 9, please?

(The deputy clerk handed papers to Mr. Burling.)

By Mr. Burling:

Q. At this point, Miss Schoch, I wish to vary the assumptions I have been asking about. I wish you to consider again, for the moment, that the transaction which is related in Plaintiff's Exhibit 5—the gift agreement— is
2029 not a sham but is a bona fide gift and that it was executed on October 5, 1931. But I ask you to assume also that on October 2, 1931, the purported donee, Fritz von Opel—that is, purported donee of the legal title, not the usufructuary interest—had gone to consult one of the most eminent lawyers in Germany, a Dr. Hachenburg, and had discussed the problem with him,

and that Hachenburg had prepared a document, which I will show you in a moment, and that that document was used for the basis for the preparation of Plaintiff's Exhibit 5, the purported gift agreement.

I will ask you if you would then come to the same conclusion to which you would come on my prior hypothesis. I show you Plaintiff's Exhibit 7 and ask you to assume that this is a letter which Hachenburg wrote to Wilhelm von Opel. I show you Plaintiff's Exhibit 8 and ask you to assume that this is a draft of the gift agreement prepared by Hachenburg.

I show you—I am sorry; I think I said plaintiff's. These are Plaintiff's Exhibits 7 and 8.

Now, I will show you Plaintiff's Exhibit 9 and ask you to assume that this is a memorandum entitled, "Fundamental Considerations," which Hachenburg prepared on October 2 and which Fritz von Opel took back to Wiesbaden with him on October 2, and which he discussed with his father and with the lawyer who drew up the final
2030 form of the gift agreement.

Now, my question is, would the additional assumptions which I have given you lead you to any different conclusion as to the intent of the parties and as to the legal effect of what was done? A. Assuming that the agreement that was made on October 5 was based on these drafts and considerations—

Q. That is correct; that is the assumption I now give you. A. Yes; in the light of these, what we may call, Hachenburg papers, I come to a different conclusion from the one reached merely on the basis of looking at the Exhibit 5.

Q. In other words, if we assume that the gift agreement was drawn up on the basis of the Hachenburg papers and that another lawyer was asked to draw up a final form merely as a device for saving legal fees which Hachenburg might charge, then you come to a different conclusion from

the one you testified about yesterday; is that right? A. Yes.

Q. Will you explain that, please? A. I see from the Hachenburg draft and the explanatory writings that what Dr. Hachenburg had in mind was an immediate gift of the stock from father to son and the creation of a usufruct for the father or for the parents in the near
2031. future.

Q. What is it, from the Hachenburg papers, that shows you that that was what was intended by Hachenburg? A. The intention of Hachenburg, as it appears from these papers, was that the stock—the Opel stock, which was the purpose of the gift, was to be placed into a holding company.

Q. Where do you see that, please? A. In Section 2 of the gift agreement.

Q. That is Section 2 of what we now assume to be Hachenburg's draft of the gift agreement, which is in turn Plaintiff's Exhibit 8? A. Yes.

Q. What does the Hachenburg draft of the gift agreement provide with respect to a holding company? A. It provides that Mr. Fritz von Opel is entitled to—upon demand of the donors obliged to assign the shares to a holding company which he owns. In this case the parents would have the usufruct in 75 per cent of the shares which the holding company will be required to issue in exchange for the Opel shares.

Q. What would the legal significance be of the assignment to the parents Opel of the shares of the holding company? A. Well, the draft provides that the shares
2032 shall be deposited in the name of the father.

Q. Perhaps I should rephrase my question. I withdraw my prior question and ask this one:

What would the legal significance be of the deposit of the holding company's shares issued in exchange for the Opel shares in the names of Wilhelm and Marta von Opel?

A. In my opinion, that would constitute the establishment of the usufruct, assuming that the bank—that it is understood that the bank holds the shares for Wilhelm von Opel as usufructuary.

Q. In other words, if Wilhelm and Marta von Opel agree that the shares of the holding company which holds the Opel shares are to be deposited in their name in a bank, then, if Fritz von Opel had done that, that deposit would constitute the delivery of possession sufficiently to create a usufruct then and there; is that right? A. Yes.

Q. Is there anything in any of the three Hachenburg papers which I have shown you—namely, the letter to Wilhelm von Opel, the draft agreement, and the memorandum entitled, "Fundamental Considerations"—which in any way shows that what Hachenburg was intending to do was to create not a usufruct but merely a claim which the parents would have against Fritz von Opel, either for income or for the creation of a usufruct at some vague
2033 time in the indefinite future? A. I cannot see anything in these papers which would support that view. In my opinion, Dr. Hachenburg made an elaborate provision for a usufruct to be created in the near future through this holding company.

Q. Will you state whether or not the language of the Hachenburg draft agreement is consistent or inconsistent with your view that what Hachenburg intended to do was to have a gift to Fritz von Opel, followed in the near future by a creation of a usufruct brought about through a holding company device? A. Well, the provision that follows the passage—that shortly follows the passage—I have just read, in which it is said that Geheimrat von Opel, and in case he should predecease his wife, then his widow may vote the deposited holding shares by virtue of the usufruct.

Q. If Geheimrat von Opel or his widow were to have merely an in personam claim to have Fritz create a usu-

fruct in the future, they would not have any right to vote the shares at all, would they? A. Not unless they held the shares.

Q. But if they did hold the shares under the agreement, they would have a usufruct; isn't that so? A. Yes.

Q. Do you observe the words in the Hachenburg
2034 draft to the effect that Geheimrat von Opel may vote deposited holding shares by virtue of the usufruct whenever the vote involved the declaration of the net profits and/or a resolution in respect thereto, including resolutions of the distribution of reserves and funds? A Yes.

Q. Going back to Dr. Kronstein's testimony a month ago, did you hear him tell me, on my cross examination of him, that there were different views in Germany—to be exact, three—as to the right of a usufructuary to vote shares: the most extreme being that he had no such right; the middle one being that he had a right to vote in so far as income was involved; and the most extreme on the other side being that he had the sole right to vote the shares? A. Yes, I heard that.

Q. Will you state what, in your opinion, Hachenburg was intending to do by the words of the draft which I just read to you? A. I think that Dr. Hachenburg was well aware of this conflict of opinions, and he wanted to make it perfectly clear that the rights of the usufruct in regard to voting should be—that is, he adopted what you call the middle view.

Q. In other words, Hachenburg was aware that
2035 there was doubt in German law on this point and sought to avoid any problem by solving it in the gift agreement itself; is that right? A. I think so.

Q. That is a problem which arises in connection with an in rem right, namely, usufruct, isn't it? A. Yes. He says expressly they shall vote by virtue of the usufruct.

Q. That is totally inconsistent, is it not, with the thought that it was intended that the Opels establish merely a claim for income or claim to have usufruct created in the future in order to secure a claim to income? A. Yes; that is, in my opinion, inconsistent.

Q. So, having seen the Hachenburg draft, is it not correct that you revise your first opinion, which was that the parties intended immediately to create the usufruct, and that the whole gift, therefore, may have failed because of failure to provide the technical language necessary to create usufruct then and there; and that you, having seen the Hachenburg draft, would now say that it was the intent of the parties to pass title immediately to Fritz von Opel; it being the intent of the parties also that soon thereafter Fritz von Opel would place the proceeds of the gift in a holding company and create a usufruct to his parents by depositing shares of the holding company
2036 in their name? A. Yes.

Q. I will now ask you assume something further. Let us assume that the intent of the parties was as you described and that a bona fide gift was intended and executed on October 5, and that thereafter Fritz von Opel acquired the shares of a Swiss holding company called Uebersee Finanz-Korporation. Let us suppose he placed the proceeds of the gift into Uebersee and that he deposited the shares of Uebersee in a bank safe deposit box and took the key and gave the key to his father's agent, it being understood by the father, the agent—and I will give the agent the hypothetical name of Hans Frankenberg—and it was understood by the father, by Frankenberg, and by Fritz that Frankenberg was to hold the key as agent for his father.

On that hypothesis would valid delivery of possession of the res have been made to Wilhelm von Opel? A. Yes.

Q. Would such delivery bring a usufruct into being? A. Such delivery would bring into existence the usufruct.

Mr. Boland: Your Honor, may I ask a question? This is under German law?

Mr. Burling: I was coming to that.

2037 By Mr. Burling:

Q. As a matter of German law, would it make any difference whether the safe deposit box was Box 1917 in the Schweizerische Kreditanstalt in Zurich or was in a safe deposit box in a bank located within the Reich? A. Yes, it might make a difference.

Q. Will you state what it is? A. It might make a difference because the German court might look to the Swiss law concerning a usufruct, because the situs of the securities was in Switzerland.

Q. You heard Professor Kaufmann testify as an expert in Swiss law that, as a matter of Swiss law, you could bring a usufruct into existence by delivering the key to the box in which the securities were? A. Yes.

Q. I am not asking you to testify as an expert on Swiss law; but assuming that Professor Kaufmann is correct as to the Swiss law, then, as a matter of German law, would it make any difference whether the securities were in Box 1917 in Zurich or were in a box physically located in Germany? A. No, that would make no difference.

Q So even if the box which I ask you to assume was in Zurich, on the hypothesis I have given you, a usufruct would come into existence at the moment that the
2038 key was delivered to this hypothetical person named Frankenberg; is that correct? A. Yes.

Q. Now, did you hear Professor Kronstein testify concerning what I believe he referred to as three possible ways of construing Plaintiff's Exhibit 5 in the light of the

Hachenburg papers—or three hypotheses? A. Yes, I remember.

Q Do you recall that he stated as his first hypothesis that they at first never intended to create an in rem right at all, but that they intended nothing beyond a mere claim which the father and mother could at their option exercise to receive 80 per cent of the income upon demand? A. Yes; that, if I remember correctly, was his first hypothesis.

Q. Now, is it your opinion that that is a possible construction of the papers?

Mr. Boland: Just a moment. I think, Your Honor, that this subject is confusing enough without misstating Dr. Kronstein. I remember this point very, very clearly.

Mr. Burling: I am endeavoring to do this in good faith. If counsel will state what the first hypothesis is—

Mr. Boland: The first hypothesis is that Dr. Kron-
2039 stein testified that using the gift agreement alone, having nothing else in front of you but Exhibit 5; there were three possible constructions or interpretations. Then, when he went to the Hachenburg draft, that eliminated some of those possible constructions. But the three potentials were on the gift agreement alone, Exhibit 5.

I think it would be very confusing—

Mr. Burling: I am genuinely confused, if Your Honor please. I thought all the hypotheses related to all four papers—that is, the actual gift, the draft gift, the letter, and memorandum.

If counsel will now state which hypothesis his expert asserts is the correct one, on the basis of all of the four papers, we can perhaps proceed more rapidly.

Mr. Boland: As I recall the interpretation of Dr. Kronstein, on the basis of the Hachenburg draft was his possibility 3, which was an in personam claim againt the donee, with the right to establish and to secure an in personam right through establishment of a usufruct.

Mr. Burling: May I ask, if Your Honor please, is that the position which counsel finally takes?

Mr. Boland: Is that question directed to the entire presentation of the case? Our case is based upon the facts and the clear intent, as has been testified to by the father, the son, and the lawyer who was present.

2040 The Court: I think the best way we can do this is to have you ask the questions, Mr. Burling, which you think would meet those problems—questions of law.

Mr. Burling: I was about to ask this witness if she agreed with what I thought and with what she thought Dr. Kronstein testified to.

The Court: I think the form of that might get us sometimes into trouble. You have different hypotheses from his.

Mr. Burling: I will put the hypotheses as my own.

The Court: That will relieve you a little bit.

Mr. Boland: Yes.

The Court: I get the point. Of course, you could include his name in there; and if Mr. Boland says he did not do that, he may include his name when he asks the other way. It does not make any difference. I understand that each one of you might have a little different view of what the doctor said.

Mr. Boland: I did not rise as a matter of objection but merely as a matter of assistance on the assumption that probably Mr. Burling had misinterpreted.

Mr. Burling: I quite agree with Mr. Boland. This is a different subject.

By Mr. Burling:

Q. I withdraw the question I previously put and
2041 ask you this:

Will you examine Plaintiff's Exhibit 5, the gift agreement? On the assumption merely that this is a bona

fide document and not a sham, and that it was executed on October 5, in your opinion is it possible to come to a conclusion, as a matter of German legal construction, that this document was intended to create not a usufruct but merely a claim which the parents Opel might exercise upon demand in the future for income? A. No. I think this construction would be inconsistent with the plain, unambiguous text of the agreement itself.

Q. In other words, if I ask you whether the hypothesis of that construction is right—is possible—your answer is, "No, it is impossible"; is that right? A. Yes.

Q. Now, I will take the second hypothesis.

Mr. Burling: I withdraw my remark.

By Mr. Burling:

Q. Am I right in thinking that the reason why the hypothesis I gave you is impossible is that the agreement, in terms, in its plain language, refers to usufruct, which is an in rem right, and that the German court would not construe an instrument purporting to create an in rem right as being intended to create merely an in personam claim? A. Yes, that is correct.

2042

Q. Now, I will vary the hypothesis. Will you now assume that you are given not only the gift agreement itself but also the Hachenburg papers? Am I right in thinking it is also clear that in the light of the Hachenburg papers it would be impossible for the German court to come to the conclusion that what was intended was merely a claim and not the creation of an in rem usufructuary right? A. That is my opinion.

Q. It is your opinion, is it not, that Dr. Hachenburg knew the difference between a claim and a usufruct? A. I think so. I think if he provided for a usufruct, he meant a right in rem.

Q. You agree, I take it, with Dr. Kronstein, that Hachenburg was one of the most distinguished and learned lawyers in Germany, do you not? A. Oh, yes, indeed.

Q. So the first hypothesis I gave you you reject either on the basis of the instrument itself—that is, Plaintiff's Exhibit 5 itself—or on the basis of that instrument plus the Hachenburg papers? A. Yes.

Q. Either way, you reject the hypothesis? A. Yes.

2043 Q. Now, I want to give you a second hypothesis. Is it either possible or likely that a German court would construe the document Plaintiff's Exhibit 5 as effecting an agreement of the parties not to create a usufruct in the near future, but as embodying merely a right which the parents were to have—an in personam claim—so that if at some remote future time they felt like it, they could demand that Fritz von Opel create a usufruct? A. I think I could not put that construction on the gift agreement itself because, again, of the clear language which says the usufruct remains or shall remain with the Opels.

Q. Let us vary the hypothesis slightly. Suppose I also give you the Hachenburg papers. Then what is your opinion as to the hypothesis that I just put? A. Well, the Hachenburg papers spell out the usufruct idea and elaborate the manner in which the usufruct is to be set up. Therefore, I cannot conclude that a mere claim for some—that establishing a usufruct at some future—vague future—time was intended by Dr. Hachenburg.

Q. In other words, the second hypothesis is also unlikely, either on the basis of the instrument itself or on the basis of the instrument coupled with the Hachenburg

2044 papers? A. Yes.

Q. Let us take a third hypothesis, and that is that what the parties intended was to create instantly a claim which the parents could exercise, if they felt like

it, for money coupled with a right which they might or might not in some vague future time also exercise to create a usufruct in order to secure their claim for income. First, do you understand the hypothesis? A. Yes. It is a somewhat complicated hypothesis, but I think I understand it.

Q. I now give you only the instrument itself—that is, Plaintiff's Exhibit 5. A. Excuse me; I do not have it here. Just to make sure.

(Mr. Burling handed a paper to the witness.)

Thank you.

Q. Do you think it likely that the German court would put that construction on Plaintiff's Exhibit 5, merely reading the face of the instrument? A. I don't think so.

Q. Will you explain why you don't think so? A. Because, as I said just a minute ago, it is a somewhat complicated construction, and it would have to be spelled out somehow in the instrument itself. In other words, you cannot read into an instrument an intention of
2045 the party which is not found in some expression—either a complete or incomplete expression—in the document.

Q. In the document itself, do you see any expression of the hypothesis I just put to you? A. No, I don't.

Q. Will you also look at the Hachenburg papers and state whether on the basis of the Hachenburg papers and the instrument itself you think it likely or unlikely that the German court would adopt that hypothesis? A. I think it is highly unlikely, for the same reason that I have given just now.

Q. Do you see anything in the Hachenburg papers which indicates that it was the intent of the parties to obtain a right, an in personam claim for income, coupled with the right that they could at some point in the future, if they felt like it, create a usufruct in order to secure that claim?

A. No, I cannot read that interpretation from the Hachenburg papers.

Q. Do you see anything in the papers—in the Hachenburg papers—where Hachenburg said anything about such an intent? A. No.

Q. Are the Hachenburg papers consistent or inconsistent with that hypothesis? A. I think they are in-
2046 consistent.

Mr. Burling: Now, if Your Honor please, I wish to read a sentence from Dr. Kronstein's testimony, as a basis for examining this witness. I am reading from page 410 of the record.

"If you take my first possibility in regards to the first paragraph on page 2, you have to interpret the section 5 this way:

"First, that the Opel parents can make a claim against the son; but without making a demand, no obligation on the side of the son can exist."

The Witness: I take it that section 5 refers to the gift agreement?

Mr. Burling: Yes. Dr. Kronstein was testifying about the purported gift agreement of October 5.

The Witness: Yes.

By Mr. Burling:

Q. Now, do you have an opinion concerning Dr. Kronstein's testimony that I just read to you? A. Yes, I have. I do not agree with Dr. Kronstein's interpretation.

Q. Will you explain why you do not? A. Because I think the theory that a mere in personam claim for income was intended is contradictory to the wording and the tenor
2047 of this paragraph. I cannot find any indication of a right in personam for income alone.

Q. Now, I am going to read another portion of Dr. Kronstein's testimony, from page 442 of the record.

"Question: Is there anything in this letter, Plaintiff's Exhibit No. 7, which would shed light on the intent of the parties?"

Will you look at Plaintiff's Exhibit 7, please? A. Yes, I have it here.

Q. "Answer: Yes.

"Question: Would you point out the particular verbiage of the letter and read it aloud, please?

"Answer: One point is to be found in the last part.

"Question: The last paragraph?

"Answer: Of the letter.

"Question: Of the letter?

"Answer: Yes.

"It says: 'But the same would apply if the contract were to provide not for a true usufruct, but instead for a purely personal claim to the payment of a corresponding share of the profits. This right also would be part of your property. It is to be evaluated in the same manner as the usufruct itself.'"

Will you examine that portion of the letter to 2048 which Dr. Kronstein referred? A. I have.

Q. Will you state whether you agree with Dr. Kronstein that this indicates that the parties intended a claim for income as opposed to the creation of a usufruct in the near future? A. In my opinion, this indicates just the opposite.

Q. Will you explain why? A. In the preceding paragraph, Dr. Hachenburg explains that the usufruct will have to be included in the property tax return. Then he goes on to explain that this usufruct is not especially expensive from the point of no taxation, because even if a usufruct will not establish but a purely personal claim, this right would also have to be reported as property under the property tax. In other words, he speaks in the subjunctive mood.

Q. Just a moment. I should like you to look at the German.

Mr. Burling: May I have 7-A, please?

(The clerk handed a paper to Mr. Burling.)

By Mr. Burling:

Q. Will you state whether in German grammar there is a usage comparable to the English use of the subjunctive for conditions contrary to fact? A. Yes, the usage is just the same.

2049 Q. In other words, what Dr. Hachenburg is saying, then, is that if this were something else, you would still have to pay the tax? A. Yes. It is the same thing as saying, "If I had a million dollars, I would have to pay a high income tax."

Q. And the use of the subjunctive would indicate that either you do not have a million dollars or that this was not a personal claim; is that right? A. Yes.

Q. Now, I am coming to another topic, Miss Schoch, and I ask you again to assume various things. I ask you to assume that a valid gift was made on October 5—that is, that there was not a sham; that it was executed on October 5; and that thereafter Fritz von Opel placed the proceeds of the gift into Uebersee, placed the shares of Uebersee in a box in a bank in Zurich, and by agreement between himself, a hypothetical man named Frankenberg, and Wilhelm von Opel delivered the key to Frankenberg as agent for Wilhelm, thus creating a valid usufruct.

Assume that all this happened on or after October 5, 1931; and assume further that Wilhelm and Marta von Opel never received a licens; but waived or abandoned their usufructuary interest in those securities of a Swiss corporation.

Would it have been possible at any time after
2050 October 5, 1931 for them to have waived or abandoned such interest? A. Under German law, they

required a license to waive such interest. In the absence of a license, such a waiver would have been void.

Q. Therefore, even if they purported to do so, the usufructuary interest would remain in them; is that right? A. Yes.

Q. What section or what provision of German law required a license to engage in this waiver? A. A provision in the foreign exchange decree, which said that any transfer or other act of disposition concerning foreign securities requires a license.

Q. What provision is that? A. I can refer you to the decree of August 1, 1931 and its subsequent decrees and laws which are incorporated.

Q. In other words, it began with paragraph 4 of the decree of August 1, 1931, and was then restated in subsequent decrees? A. I think it was section 4.

Q. Is it not true that at no time after August 1 could you dispose of foreign securities, if you were a devisen inlander, without a license? A. That is correct.

Q. Is there any provision of German law which says that a purported disposal in violation of law is

2051 void? A. Yes.

Q. What section is that, please? A. First of all, there is a provision in the German Civil Code which provides that a legal act which violates a statutory prohibition is void.

Then, there is a special provision in the foreign exchange control decree of August 1, 1931, and in subsequent legislation, which expressly says that a transaction which requires a license—no; it says that any transaction made contrary to the provisions of this law is void.

Q. You have no doubt, do you, that a waiver or abandonment of usufructuary in foreign securities was within the purview of the foreign exchange control legislation? A. Yes.

Q. You do not have any doubt? Is that what you mean? A. Well, it is my opinion that a waiver of usufruct is an

act of disposition within the meaning of the foreign exchange control law.

Q. Thank you. Now, who—that is to say, what agency or what official of the Government—was entrusted with the duty or supervision of issuing licenses for disposition of foreign securities? A. The granting and handling
2052 of licenses was in the jurisdiction of the so-called foreign exchange offices, which formed part of the regional tax collector's office.

Q. That is to say, in the first instance, throughout the country there were foreign exchange control offices? A. Yes.

Q. What agency of the German Government had the obligation of supervising them? A. These agencies were first placed under the jurisdiction of the Reichs Ministry of Economic Affairs in 1931. Later a special central agency was established under the name of Reich Office of Foreign Exchange Control. And again, I think in 1938, the supervision was placed back into a department of the Reichs Ministry of Economics.

Q. Will you state whether at any time the Reichsbank had authority to issue licenses to engage in foreign exchange—in the disposition of foreign exchange? A. The Reichsbank had a very limited jurisdiction to grant such licenses—that is, only in connection with licenses applied for under one of the so-called standstill agreements—that is, agreements which were entered into between groups of foreign creditors and German debtors.

Q. More specifically, at any time from October 5, 1931, until June, 1942, did the Reichsbank have authority to license the waiver of usufructuary interest in Swiss
2053 securities held by—usufructuary interest being held by German residents? A. No. The Reichsbank did not have such jurisdiction.

Q. Coming to the agency which did have jurisdiction, will you state whether or not it was required by German

law that such licenses be in writing? A. Yes, that is expressly provided for.

Q. That is, that licenses must be in writing? A. Licenses must be in writing.

Q. It is your testimony, is it not, that if there was no license obtained in writing from the agency having jurisdiction—namely, the Foreign Exchange Control offices—then any purported waiver of usufruct after October 5, 1931—I am referring to usufruct in Swiss securities—would be totally void and of no effect; is that correct? A. Yes.

Q. Now, let us vary the assumption and assume merely that what Wilhelm and Marton von Opel acquired as the result of the gift agreement of October, 1931, was a claim for income coupled with a claim to have Fritz von Opel at some indefinite point in the future create a usufruct in order to secure that claim. Do you understand the 2054 hypothesis? A. Yes.

Q. In other words, we are now dealing with an in personam claim for income and for the creation of a usufruct.

Let us assume, further, that the res given on October 5, 1931, was put into a Swiss holding company and that the claim attaches to the Swiss holding company. Do you follow me? A. Yes.

Q. Was it possible, as a matter of German law, in your opinion, to waive, abandon, or give away such an in personam claim to Swiss securities without a license under the Foreign Exchange Control regulations? A. Well, I would like to distinguish between the in personam claim for income—

Q. Will you testify, first, about that? A. Now, as regards that, it is clear that the waiver of such a right for income would require a license, because this claim would be a claim payable in foreign currency; and claims payable in foreign currency under the Foreign Exchange

Control law could not be transferred or otherwise disposed of except with a license.

Q. And again, the license would be issued in writing by the Foreign Exchange Control office, would it not? A. Yes.

Q. No other agency of the German Government
2055 would have jurisdiction to grant a license? A. That is correct.

Q. And an oral license would not be valid, would it? A. No.

Q. And a purported abandonment or waiver of the claim by the claimant would be void under German law, would it not? A. Yes.

2056 Q. So that if all we are talking about is a claim for income, it is perfectly clear, is it not, that if a license was not obtained, then whether or not the parties purported to abandon it, the claim continued to exist? A. That is correct.

Q. That would be true—that is, the claim would continue to exist—until the year 1942; isn't that right? A. Yes.

Q. Now, let us come to the question of whether the parties could waive—abandon—a claim to have a usufruct created in the future. Will you discuss that, please. A. Well, that would leave some doubt. This is a rather unusual kind of claim—

Q. Have you, at my request, looked for cases dealing with the application of the foreign exchange control laws to purported abandonments or waivers of claims to create usufructs in the future? A. Yes.

Q. And what success have you had? A. I have not been able to find any precedents which would be applicable to this particular kind of claim.

Q. In other words, this situation would be so rare that there is no case dealing with it in the German reports; is that right? A. That is correct.

2057 Q. Now, are you able to apply any techniques of German law so as to tell us what a German court

probably would have done had such a situation arisen? A. I would say this: Even if the term "claims payable in a foreign currency" is primarily intended to cover claims in money, yet the term had to be applied and was applied in a broader sense. For instance, it was applied to cover claims for damages where the damage was not yet liquidated, or it was held to cover claims from which eventually money claims would arise.

Considering further the purpose of the foreign exchange control regulations, to make available to the German economy all possible sources of foreign exchange and foreign currency, I would conclude that the German court would be inclined to consider such a claim for the establishment of a usufruct, which eventually would result in foreign currency which would flow into Germany—that a court would consider this to come under the concept of a claim payable in a foreign currency, particularly since the foreign exchange regulations and the requirement of a license do apply to a transfer or act of disposition concerning foreign shares, foreign securities, and do apply clearly to a claim for money accruing from these foreign securities.

So this particular situation might appear as a loophole for parties who have a claim for the establishment
2058 of a usufruct, and by not exercising the right to have the usufruct established, they would deprive the German Government of this accrual of foreign exchange.

Q. So that your conclusion is, although you can find no case precisely in point, that, as a matter of construction of the foreign exchange laws, a German court would in fact hold that a waiver of a right to have a usufruct created in the future was void unless it was licensed; is that correct? A. I would say that that would be highly probably in the later thirties, when the German foreign exchange situation became tighter and tighter. I think there is a

strong probability that the court would have decided that way.

May I add something to what I just said?

Q. Please do. A. I would also, in reaching this conclusion—I would also consider a provision in the rules and regulations implementing the foreign exchange control law of 1935.

In these rules and regulations it is provided that, with regard to the duties of tendering foreign exchange, foreign securities, and claims payable in foreign currency, it is provided that where the party, which is under a duty to tender, tenders to the Reichsbank a claim payable in foreign currency which is not yet due, then this party is under a duty to bring such claim to maturity as soon as possible.

So that again points in the direction of my con-
2059 clusion that parties were expected to do all they could to make this foreign exchange available to Germany.

Q. Now, let me ask you this. Would a director of the Reichsbank have any legal capacity in the year 1937 or 1938 to declare that a right to have a usufruct created could be waived without a license? A. In my opinion, such a declaration was not within the jurisdiction of the Reichsbank.

Q. And supposing now that a director were to say, "We do not regard a waiver of a right to have a usufruct created as coming within the foreign exchange control regulations." Would such a statement made by a director of the Reichsbank have any legal effect whatsoever? A. I don't think so.

Q. And supposing he were to say instead, "I do not want to discuss legal problems with you. What I am interested in is getting foreign exchange returned to the Reich," would that statement have any legal bearing on whether or not an unlicensed waiver of a right to have

a usufruct created was void? A. Clearly, such a statement would have no legal effect.

Q. It would be, as a matter of German law, totally irrelevant, would it not? A. Yes, sir.

Mr. Burling: If Your Honor please, I would like
2060 to recapitulate. I think I can do it briefly. Then I will be through.

By Mr. Burling:

Q. Is it not your testimony, Miss Schoch, that on the assumption that father and son agree that no gift at all is to be made, but that a purported gift was to be made, under which the son would take the father's money out of Germany, out of a locked German safe, such an agreement did not pass title at all to the son? A. That is correct.

Q. And if nothing further were done until June, 1942, title would remain in the father? A. Yes.

Q. I ask you to assume nothing more than that Plaintiff's Exhibit 5 was executed in November 1931 and that in October, 1931, the Opel shares, which are the subject of the purported agreement, had been sold to General Motors against a claim for dollars and General Motors stock. Then is it not correct that the purported gift was void, as title would remain in the father? A. That is my conclusion.

Q. And, again, title would remain in the father until 1942, assuming nothing further happened? A. Yes.

Q. And assuming now that there was no sham,
2061 but instead a bona fide gift made on October 5, 1931, and assuming that the gift was prepared on the basis of the Hachenburg papers that you have before you and assuming one further thing, that the proceeds of the gift were placed in a holding company in Zurich and that

the shares of the holding company were put in a box and the key to the box given to our hypothetical friend, Frankenberg, you would think that after that delivery to Frankenberg a usufruct arose in the father and mother, would you not? A. Yes.

Q. And under that usufruct, they would have the right, to co-possession of the res? A. Yes.

Q. And a right to a voice in the management of the res? A. Yes.

Q. And a right to an income less an in personam income to Fritz of 20 percent? A. That is right.

Q. They would have an in rem right in the property as a matter of German law? A. Yes.

Q. And unless a license was obtained in writing from the Reich foreign exchange office or subsidiary, it would have been impossible for Wilhelm and Marta von Opel to have waived that usufructuary right up to and including the year 1942; isn't that right? A. Yes.

2062 Q. So that that peculiar interest in the property, on the assumption I have given you, would be in Wilhelm and Marta von Opel in 1942, wouldn't it? A. It would.

Q. Even assuming that the key to the box was not given to Frankenberg as Wilhelm's agent, you would still assume that Wilhelm and Marta von Opel had an in personam right to require Fritz von Opel to create this usufructuary right, wouldn't you? A. Yes.

Q. And it is your best opinion, is it not, that at no time after October 5, 1931, could they have waived this in personam right validly without a written license from the Reich foreign exchange office? A. Yes.

Q. And if they did not obtain a license from the Reich foreign exchange office, then the in personam claim would, on the assumption that nothing further happened, remain in them up until 1942? A. Yes.

Q. So that even on the assumptions which I have now given you, in 1942 Wilhelm and Marta von Opel could

require, as a matter of law—as a matter of German
2063 law—Fritz von Opel to create a usufructuary right in Wilhelm and Marta? A. Yes, I think so.

Mr. Burling: You may inquire.

Cross Examination

By Mr. Boland:

Q. Will you describe, Miss Schoch, briefly, the meaning of scheinvertrag under German law? A. A scheinvertrag is a purported transaction entered into by two parties which are agreed that the intention that is expressed in their agreement is not their true intention.

Q. And this necessitates, does it not, an intentional false appearance? A. It necessitates—

Q. It is an agreement that what has been agreed to in writing, for example, is not true? A. Yes.

Q. Now, I have some hypothetical cases here, Miss Schoch. If you will just bear with me, we will go through them.

Suppose that A has real property and that A wants to save property taxes. Let us assume that A is very rich and therefore in a high tax bracket and A decides to transfer the property to B, either as a gift or for a nominal consideration, and his sole purpose under this hypothetical case is to save taxes. Is this a schein-
2064 vertrag? A. If there is a true intention that a gift shall be made—

Q. Let us assume that this is all that we have before us. This is all that we have. Do you want me to repeat the facts? A. Yes, please.

Q. A has real property and he wants to save property taxes. He is very rich and in a high tax bracket. So, therefore, he transfers this property to B, either as a gift or for cheap or nominal consideration. His sole pur-

pose is to save taxes. The question is, is that a scheinvertrag? A. On these facts alone, no.

Q. Let us take hypothetical No. 2. A is in financial difficulties. He has a very valuable diamond and he wants to protect it against creditors, so he transfers this diamond for a cheap consideration or as a gift to his cousin. Is this a scheinvertrag? A. No.

Mr. Burling: Your Honor, I object unless the facts are stated. The testimony is, and it has been brought out, I think, very clearly that a scheinvertrag is a sham transaction. I think we are agreed—

Mr. Boland: Well, we are not necessarily agreed on sham transaction. We are agreed on what schein-
2065 vertrag means, I think, according to Miss Schoch. We will accept her definition.

Mr. Burling: The witness testified that the correct translation of that term was sham transaction just yesterday. Counsel is putting a case which leaves out the essential fact, which is, what is the intention of the parties? It either is or not intended to make a gift or it is or is not intended to be a sham. I think counsel should not put hypothetical questions which contain very adroitly phrased ambiguities.

Mr. Boland: The adroit ambiguities are not intentional, Your Honor. I might state here that it seems to me that in this case we have had no evidence whatsoever of any intent for a sham transaction. It is purely hypothetical and speculative.

These are merely an analysis of questions under German law to find out just how far Miss Schoch goes, on a limited number of facts such as we have got in this case. We have no intent here shown that the parties intended to sham.

Mr. Burling: I am not trying to ask Miss Schoch to decide whether what happened in Wiesbaden is a sham.

I wanted to bring out that, in the German law, if the parties intended to sham, then it is void, and I wish counsel would tell the witness what the facts are he is interrogating about and what is the intent of the party.

Mr. Boland: I gave the intent. The intent in the
2066 last hypothetical was solely for the purpose of protecting the diamond against creditors. That is the only intent in the case.

Mr. Burling: That is a description of motive, but Your Honor must hear bankruptcy cases, by the score, where there are transfers where the intent is to defraud the creditors. You also must hear cases where Your Honor finds that the intent was not to defraud the creditors.

The Court: I think if she says there is any element there that makes it impossible for her to tell, she can answer it that way. I think I had better give him considerable latitude on what it would amount to.

Mr. Burling: As long as it is clear.

The Court: If the witness cannot answer the question—

Mr. Burling: As long as the witness is not being misled, I make no objection.

The Court: She can say if she does not know.

Mr. Boland: If the witness will state that under German law, under such a set of facts, she cannot come to any conclusion, I will accept that and go on.

The Court: I think you ought to feel at liberty to do that. If you think you are missing some essential facts, you may do so.

The Witness: Well, I think the one essential fact that has to be present in each hypothetical case is the
2067 intent of the parties.

By Mr. Boland:

Q. Let me ask you this question. Is it your opinion that under German law, on such a set of facts, a court

could not come to a decision one way or the other? A. I think the court—if the court had no other facts—

Q. That was my assumption, that the court had no other facts but the facts that I gave you. I realize that Mr. Burling made the objection for you, and not you. A. Well, I think that is a rather remote hypothesis, because in cases like this there are far more numerous facts before the court.

Q. It is your opinion that on the basis of this hypothetical there are not enough facts for the court to determine whether this is or is not a scheinvertrag; is that correct? A. That is correct.

Q. That is your testimony? A. Yes.

Q. Thank you.

The Court: That may depend a little bit on who is bringing the suit, whether it is a creditor or whoever it is? Wouldn't that make a difference? The burden of proof would make a difference?

Mr. Boland: Well, I asked the general question.

2068 The Court: I do not know the German law, but I would be surprised if it would not.

By the Court:

Q. Does the burden of proof have some significance in German law? A. Surely. In German law the person that alleges that a transaction is a sham transaction has to have enough proof, and that party will bring before the court all facts which might enable the court to decide as to intention.

By Mr. Boland:

Q. Let us see whether there are enough facts in my third hypothetical, Miss Schoch.

Let us assume that there are rumors that the legislature—we are in Germany—will enact a statute which

gives the Government a right to take all estates if there is no close relative of the deceased alive. More or less, you understand what the American theory of escheat is? A. Yes, indeed.

Q. This is not as limited as our theory of escheat. It was intended to broaden and take in more property.

Let us assume that there is a rumor to this effect in Germany. Now, A's closest relative is a fifth cousin, so A gives his fifth cousin this property and says, "I understand that they are going to enact some legislation which might take my property upon my death and just
2069 give it to the state, so I want to give it to you now," and he does give it to this fifth cousin, and it consists of six million marks shares as a gift, and the only fact as to the intent is that but for the fact of this proposed pending legislation, this gift would never have been made. Is that a scheinvertrag? A. Again, all I can say is that if the court is convinced that the party intended a gift, then the motive for the gift will not change that conclusion.

The Court: Are not we all in agreement—are not both sides in agreement—

Mr. Boland: Frankly, I do not know whether we are or not.

The Court: If they—Mr. von Opel and his wife—made an absolutely bona fide gift to the son to avoid foreign exchange, or whatever reason it was, it was a bona fide gift and he divested himself of all interest in his wife and all interest in it, I think we will all agree that that is not a scheinvertrag.

Mr. Boland: If we are all agreed, I will not continue—

Mr. Burling: I shall argue that the totality of the evidence is that it is not so.

The Court: I understand that. If your argument is going to be that, by that act and by virtue of subsequent acts that you say occurred, he did not intend absolutely

to pass the title, that he intended to reserve that to
2070 himself, and he went through this formality in order to beat, so to speak, the foreign exchange, that is what a sham is, in my judgment, and I certainly would think that it would be that in Germany. If I give my property absolutely away, with perfectly good faith, and I can accomplish beating taxes, that is not a sham in any law.

Mr. Boland: That is the point, Your Honor.

The Court: I would not think it would be.

Mr. Boland: I gathered from Mr. Burling's statements all along that he is going to argue that insofar as this was an attempt to more or less go beyond the devisen laws and get beyond the foreign exchange, and that because of that it must have been a sham transaction.

Mr. Burling: That is a matter of evidence.

Mr. Boland: That is his No. 1 contention.

The Court: You do undertake the burden, do you not, Mr. Burling, of saying that that is an item—this idea of foreign exchange—together with other items of evidence, tending to indicate that Mr. and Mrs. von Opel did not divest themselves of the title by that transaction, but intended to retain title?

Mr. Burling: Your Honor exactly apprehends my position as a possibility, but I would like to think a little more of where the burden is. The burden starts with my friend.

The Court: I am not talking about the burden,
2071 but we are getting into a whole lot of questions over sham where there is no disagreement. If we have a document fair on its face and absolutely intended by the parties to divest them of all interest, whether it be to defeat the foreign exchange, defeat creditors, or defeat taxes, or anything else, that is absolutely fair on its face but absolutely made with the intention of both of the parties to divest themselves of all interest, there is no sham to that.

Mr. Burling: That is correct, Your Honor.

The Court: On the other hand, as I understand your contention, you say that they wanted to avoid some possible laws with regard to foreign exchange.

That situation, taken into account with other circumstances which you claim you have established, by virtue of setting up an agency in respect to the holding of some of the stock, and by virtue of the use of usufructuary provisions, and by virtue of control by Frankenberg, and so forth, and a lot of other contentions you make, tends to indicate that that was not a bona fide or intentional divesting of interests, but there was an interest retained and therefore that this transaction was a sham; it was not really a divesting. That is what he is arguing, as I understand it.

Mr. Burling: Yes, Your Honor; that is exactly my argument.

2072 The Court: If we are all agreed on that—and I think we are—these hypotheses do not help us very much.

I know what you are talking about. If the divesting itself and everything else is absolutely in the open, as you contend it is, the fact that it is trying to defeat foreign exchange would not make it a sham.

Mr. Boland: The ultimate point I want to bring out, Your Honor, is that the one way to avoid problems of foreign exchange was to pass title, and that was the only way to do it.

Mr. Burling: I do not agree with that.

Mr. Boland: At least, if I can't bring it out through these witnesses, these are all actual German cases, and we have the decisions on these cases.

The Court: You mean on what a sham is?

Mr. Boland: What a sham is, and I want to take her through a series of cases. Of course, she has not had practice in Germany; she might not be able to answer.

But Dr. Kronstein has indicated, and Mr. Gros has indicated, and Dr. Flatow has indicated that the one important thing was to pass title if you wanted to take advantage of the loophole.

Mr. Burling: If you wanted to do it legally, but if you wanted to commit a crime in Germany, as Dr. Kronstein agrees, you could purport to pass title.

The Court: We are still not having any trouble. We still go right back to the proposition that you
2073 passed title or intended to pass it. What is a sham?

You go through one deal and have in mind or an agreement on the side of another deal. That is what a sham is. In truth and in fact, it is the side deal, whereas this on the face of it is a sham. That must be the law. If it is any different anywhere else, I have got to have sham redefined to me. But I think we are all agreed on that.

Mr. Boland: Yes, we are.

Mr. Burling: We certainly are.

The Court: I think we are all agreed on that. I do not have any quarrel with the cases that you have mentioned. Until we get to a point of disagreement, I do think we are probably wasting time. If we are not agreed on it, I will give you all the latitude in the world.

I think what you want to bring out is if the German authorities hold over and over again, as they do, I think, in this country, and probably everywhere in the world, that it was not a sham if you passed title and had intended to pass title and you do not have something on the side saying, "I retain something" or "I get something" "we do not mean it."

Mr. Boland: With the additional consideration that if you are trying to take advantage of a loophole in the law, it does not indicate you are trying to commit a sham.

Mr. Burling: That is a matter of evidence.

2074 The Court: Whether it happened or not is a question of evidence. I think he has a right to show that.

Mr. Burling: I do not think we are in any disagreement, Your Honor. My point is that the motive is, of course, one factor which goes to the question of whether or not it is a sham. I gave my little boy, let us say, a tricycle at Christmastime. The fact that it was Christmas and that I have a little boy and it is customary to give toys to children on Christmas Day would be evidence that it is not a sham.

The Court: I said it two or three times. I meant to say —I think I did—that your argument is that this fact that he wanted to defeat a possible law with regard to foreign exchange is evidence that he did not divest himself of title?

Mr. Burling: Yes, Your Honor.

The Court: I agree with that, but I do not think that that alone, as I understand your point, necessarily defeats the bona fides of the gift. I mean that fact alone.

Mr. Burling: I agree with that; it is the totality of the facts.

The Court: Aren't we in agreement on that, then?

Mr. Boland: I am not sure I understand.

The Court: In other words, he agrees that if he wanted to defeat foreign exchange, if we believe that this is an absolutely bona fide transaction, no reservation of title, nothing on the side other than is what is on that

2075 face, I have done this to circumvent foreign exchange, and it is a loophole, that in and of itself does not render this an ineffective gift. I think he agrees to that.

Mr. Boland: Yes.

The Court: However, his position is that he has a right to take that factor into consideration as a motive, so to speak, for having the side agreement and arguing to me that that is the reason they had a side agreement, and

these other facts show this side agreement; but I do not think that affects the definition of either one of you on sham.

I do not want to hold you down, but I think we are, all of us, in agreement.

Mr. Boland: I think we are if Mr. Burling would agree that under German law if you wanted to take advantage of a loophole in the law, the thing to do is to pass title. That is the point.

Mr. Burling: I do not agree to that. Another thing to do is what I say was done here. It did not work out very well, as it turned out.

The Court: I think the reason he does not agree to it is that he says he has other items of evidence, and he wants to argue that along with it. I think that is the reason. I think he said that if that was all he had, he would agree.

Mr. Burling: If we had no other scintilla of evidence other than this motive point, I think I would agree
2076 that if we had the burden we would not win.

The Court: I am not talking about winning now; I am talking about what is a sham. I am not talking about winning. The winning end of it involves the burden of proof, but what constitutes a sham does not. That is what he is talking about.

Mr. Burling: Yes.

The Court: Well, now, does that go far enough for you?

Mr. Boland: I think it will, Your Honor. I think I will drop it.

The Court: I do not want to restrain you in that regard. I do not think there is the slightest bit of doubt about it. We have some of the most reputable lawyers in the country and some of the finest concerns going through loopholes to defeat taxes, and they are upheld over and over again. There is no sham. I mean, there is nothing dishonest about it. But if you find that there is a retention of title there, and you bring into those proceedings

some reservation, some side agreement, or some idea that this purported assignment or this prima facie evidence of assignment did not mean what it said, then that is a sham, and that is a fraud and a wrong.

The same way, as he said, in bankruptcy. If you have a perfectly bona fide transaction in bankruptcy and you do not have any arbitrary time involved in it, and you have a question as to whether it is bona fide or not, the
2077 mere fact that he goes into the transaction might not be material beyond a certain date.

That is certainly my view of the law, and unless somebody shows me the German law is to the contrary, I am going to follow that, because I cannot conceive of a sham being anything else.

Mr. Boland: I agree, Your Honor.

The Witness: I may say that that is exactly what the German law is.

The Court: I think we all agree with that. The doctor agrees with it. So I think we are all right.

I will tell you one thing that I am a little bit interested in. I do not know how you can develop it, and I do not know that you have touched on it. I am trying to know just exactly how to frame it in my own words.

This October 5, 1931, transaction or transfer, let us say, was to avoid the regulation or some regulation either in effect or coming into effect with regard to foreign exchange. Now, I would like to know from these two lawyers —both of you gentlemen—would the form of this usufructuary provision make any difference with regard to those regulations? In other words, would the fact that it was a right in rem have one effect on the regulations and the fact that it is one in personam, such as the doctor says it is, have any effect on it?
2078 I do not know whether you covered it or not. I did not quite bite down on it if you did.

Mr. Burling: It is a question of degree. Miss Schoch is able to testify she feels certain that, if it is a right in rem, then it could not have been waived, assuming it was waived.

The Court: I am not speaking about the waiver; I am speaking about the intent at the time.

In other words, there is considerable argument here in this case with regard to the fact as to whether the October 5, 1931, agreement created an interest in rem or in personam or one which might call into being a right in rem in the future. Isn't that right? That is one phase.

It is also said that Dr. Hachenburg plainly provided for an in rem transaction in his notes.

Now, plaintiff's expert on the law, as I say, comes around to the point where Mr. Stansfield drew it, and he changed it around, the effect of which was to create something in the future, which might or might not come into being.

Now, what I had in mind is, with those two situations—No. 1, Hachenburg, which gave the right in rem; No. 2, Stansfield, which might or might not—she said it did—would the fact of the doctor's interpretation of that, that it gave only a future right, have any effect or bearing or any significance with regard to the foreign exchange
2079 situation? Do you see what I mean?

Mr. Burling: I believe, Your Honor, that it is clear that in either way it would be income arising in foreign exchange, which would have to be tendered.

The relevance—and I think the reason so much time has been spent on it—of whether it is a right in rem or a right in personam is twofold. The first is that we wish to get the greatest possible right in von Opel, that is, a right in rem.

The Court: You dealt with that very proposition on the question of license, but not on the idea of whether it had any bearing on the foreign exchange.

Mr. Burling: That is the second of the twofold significance, if Your Honor please. The second relates solely to waiver.

The Court: To waiver?

Mr. Burling: Yes, Your Honor, but it is only then that it is important.

It is asserted now that whatever right was retained under the usufructuary provision was abandoned, and we contend—in fact, all the German lawyers have agreed—that if it was a right in rem, it could not have been abandoned without a license, and therefore it was not abandoned, and therefore it continued. If, however—

The Court: I know your point.

2080 Mr. Burling: If, however, it was merely a right in personam—of course, our first point is that there was no such waiver, as a matter of fact; but assuming that we do not prevail on that; then there is a difference in the degree to which our expert is certain that the waiver required a license.

She is certain that if it was a right in rem, it required a license; but can only say that her best opinion is that if it was a right in personam, it required a license.

The Court: I do not think you quite get in mind—.

Mr. Boland: Your Honor—

The Court: I know what you are talking about.

Mr. Boland: I thought that the question that you asked was what effect did the foreign currency regulations have on the gift of October 5.

The Court: That is right. Here is what I am getting at. Suppose I wanted to make up my mind as between the doctor, who says that the right in rem was not created by the Stansfield draft, and the testimony of the present witness that one was; that the intention of the parties was that. She said that the intention of the parties plainly indicated that it was, the language indicates that it was, and so forth, and the doctor takes the contrary view.

Now, I know there are any number of other contentions, but suppose I have to make up my mind as between
2081 those two. What I would like to know is, Would one method accomplished, namely, the in personam sit-

nation or the future situation, effectuate this transfer, whereas the other one might not, insofar as the foreign exchange is concerned?

Mr. Burling: I think the question is entirely irrelevant until we get to the waiver point. Prior to that time I perceive no significance in the distinction.

The Court: In other words, it does not make any difference to you, prior to the waiver, whether this court would find that it was a right in rem or a right in personam?

Mr. Burling: An in rem right, I suppose, is a more intimate or higher degree of right and therefore places the enemy a little more clearly in possession of the property; but it is only when we get to that point—that is, when we get to the war between Germany and the United States—that the waiver comes in, first in point of time, but then the right also.

The Court: If you think it is entirely immaterial as between these two rights as of October 5, then I do not care to have any distinction made.

Mr. Burling: I think it will become material.

The Court: When you take into account the waiver.

Mr. Burling: When you get to the waiver point. Our contention is you could not waive either one without a license.

2082 The Court: Yes; I understand that.

Mr. Burling: If it is an in rem right, Your Honor has no problem in German law.

The Court: Wouldn't it be helpful for me to know what these people might have accomplished? One, if they created a right in rem; two, if they created only this expectancy or this in personam situation, bearing in mind their purpose?

In other words, it might become important, when we come to consider the waiver provisions, for me to know we all agree that this is in rem or in personam or in expectancy.

Mr. Burling: Yes, Your Honor.

The Court: Now, in determining that, we have one draft by Hachenburg, which your witness says plainly indicated an in rem. She also says the other one does, too; but the doctor takes a different view.

I suppose one of you could argue to me, Well, now, if this was purely an expectancy, then there would not be any chance whatever of a claim of violation of the foreign exchange; that that would not fall under the ban, whereas a right in rem would. Therefore, it was this expectancy and that only. Then, if you could persuade me that that had some real significance, you would come to your point of waiver later on.

Mr. Burling: I think Your Honor is asking me to make an argument—

2083 The Court: No, not an argument; I just wanted to ask you if you wanted to get any testimony on that. You can think it over. It is not absolutely essential. The thought occurred to me.

Do you know what I am talking about?

Mr. Boland: Yes, Your Honor; I think so.

The Court: I think you two gentlemen are making a rather major argument not only as to the waiver, because that will relate back to whether you have a right in rem or a right in personam or in expectancy—

Mr. Burling: If I may say so, I do not believe there is any testimony about expectancy.

The Court: When I say in expectancy, I probably used a loose term. I mean the right to bring into being a rem upon demand. That is what I mean. I was using a short word. That is what I meant.

Mr. Burling: Of course, our final contention in this line—our first contention being that it is a sham—is that if it is not a sham, the action did not instantaneously bring forth the right in rem, but that the right in rem arose when Frankenberg received the key to the box in Zurich.

The Court: I know that is your view, but I thought you also took the view—and I thought that was one of the cases you cited to me this morning—that, by the very language of this instrument, having had a dual purpose,
2084 that right in rem. I thought that was your German case this morning.

Mr. Burling: That was offered to rebut Dr. Kronstein's testimony that it would have been impossible for them to do it. One of our arguments—I regret the complexity it has—

The Court: I do not think it is so terribly complex. I think I follow your arguments. I think probably you do not get the picture I had in mind, and I do not know whether it is material or not. I have an entirely open mind on it.

Let me state to you what I have in mind. You certainly argued, and I certainly thought, whether it was by way of rebutting what the doctor said or not, as a result of the testimony, that you were going to argue that, under this decision of the German Supreme Court, which reversed the two lower courts, this instrument right on its face indicated a right in rem. Am I wrong about that?

Mr. Burling: I did not mean to go that far.

The Court: Didn't you? Well, I misunderstood you.

Mr. Boland: I did, too.

The Court: I thought the testimony was that, inasmuch as this created the right in Fritz von Opel, and, by the same token, reserved the usufruct, that would be treated as a dual transaction, which would completely make out a
2085 right in rem, without all of this rigmarole of so-called delivery, which would be true if you did it by separate instruments at separate times.

That is the way I understood that. I may be mistaken.

Mr. Burling: Quite candidly, Your Honor, I would read that case the same way. I am unable to make the argument because Miss Schoch tells me that that is not what it said.

The Court: Maybe I had better get cleared up on that right now.

Mr. Boland: I think you had better. I got that same impression.

The Court: I certainly got that impression. I thought it was a very strong point in your favor if it decided that. Maybe I had better get that clear.

By the Court:

Q. Do you understand me? A. Yes, I do, Your Honor.

Q. Tell me where I am wrong on what you said. A. Under a gift agreement, which is Exhibit 5, the usufruct did not come into being because the reassignment of this delivery was not put in, was omitted.

Q. Yes. I understood that. That is where I got that conclusion of yesterday. A. That is the conclusion which I came to at the beginning. I may have confused you by analyzing the decision of this morning.

2086 The decision of this morning I think was submitted merely to show that a statement which I think Dr. Kronstein made, to the effect that a gift with a reserve usufruct cannot have been made in such way that you make the gift and at the same time the usufruct comes into being—provided of course, that all the requirements of the law are met—but that such a gift can only be defined as a gift with a charge; under German law, which means, first, the gift has to be made and full title transferred, and then there is an obligation on the part of the donee to perform certain obligations which the donor imposed upon him, and the donor, after the gift has been made, made demand that the obligation of the donee be fulfilled. In other words, you have the gift as the main purpose of the transaction.

Q. But that demand has to be made or the assignment has to be made before it comes into being? A. Yes.

The Court: I have that down. I misunderstood you.

Mr. Gallagher: Since we are trying to clear up this problem, Dr. Kronstein would like to clear it up.

The Court: I will let you do it when he comes back on the stand. I think I have it now. I am glad I brought it up, because I had a different impression.

By the Court:

Q. You still have to have what you describe as a
2087 delivery, which might be by assignment or by actual turnover? You still have to have that, and you did not have it in this case? A. That is right, at the time these requirements were made.

The Court: That has helped me. I am glad I have that straight, because I did not understand it that way.

Mr. Burling: May I state why I offered the case?

The Court: Yes. I think I have why you offered it, but you may state it again.

Mr. Burling: I offered it to rebut what I thought was the testimony that you could not do it. One hypothesis is what Miss Schoch testified she would think from just seeing the instrument itself—that the lawyers intended to do this but made a highly technical error, and by that error they caused the whole thing to fail. I offered the case, which says you can under some circumstances do it, to show that they might have reasonably tried to do it.

The Court: I follow you all the way around, then. Your idea is that you agree that this instrument on its face, without any subsequent act whatever, would not create a right in rem as of that time, but that there came a time later on—

Mr. Burling: It either failed totally—

The Court: It either failed totally, because one
2088 of the material provisions failed, or it did not create a right in rem at that time, but that later on,

when he delivered to Frankenberg, his agent, it did come into effect as a right in rem?

Mr. Burling: And that on its face it discloses an intention to disclose either an instant right in rem or an intention that one be created in the near future, rather than leaving the right in the remote future.

The Court: I understand.

In view of that position, that would make my inquiry material. I agree with that. I am very glad that that is straightened out, because I had an entirely different impression. In fact, I had a note of it, because I wanted to ask the doctor about it. I thought you found a case overruling those lower courts, which made it appear that you could create the in rem by this very instrument itself. Now I see that that is not so.

Mr. Burling: You could have.

The Court: You could have done it, but, through some technical point here, they did not, because they did not use the language in advance. I have that straight. I am glad I have it straight, because I was wrong on it.

Mr. Boland: May I thank Your Honor, because I got the same impression.

The Court: As I told you, I will have to stop in
2089 ten minutes. Have you something brief you can ask her about now?

Mr. Boland: I have several things.

The Court: Brief, I mean. I have to stop in ten minutes. You go ahead.

By Mr. Boland:

Q. Miss Schoch, yesterday you testified, on pages 1985 to 1987 that a devisen auslander in October of 1931 having property located in Germany and property located outside of Germany could not have become a devisen auslander without losing his property in Germany. If that is not true, I would like to be corrected.

Mr. Burling: I think the reporter missed a German word. I remember my question very vividly. It was a devisen inlander in October.

Mr. Boland: Pardon me. I am sure that is right.

Mr. Burling: Thank you.

By Mr. Boland:

Q. And I think that the facts were closely related to those of Wilhelm von Opel and Fritz von Opel, Wilhelm being the devisen inlander and Fritz being the devisen auslander, and the amounts of money, I think, in evaluating the property were closely related to the value within Germany and the value of the shares that were in New York.

Now, did I gather from your testimony that Wil-
2090 helm von Opel under such circumstances could not have left Germany in October of 1931 without having lost all of his property in Germany? A. I think that is not what I said. He could have left Germany, and upon leaving Germany he would have become an auslander for the purposes of foreign exchange control, but he would not have been able, before leaving Germany, to transfer the bulk of his German property abroad. He would have, under a license, been enabled to transfer some of it.

Q. You testified to a limited amount, I think you mentioned. A. Well, there was a limited amount which he could freely take out of Germany on the passport.

Q. I got a general impression from your testimony yesterday, and I think Mr. Burling's adroitness was used in creating an impression, that Wilhelm von Opel could not have left Germany in October of 1931 without losing all of his property within Germany and leaving thereby the inference that he was giving it to Fritz as an alternative.

Now, I want to ask you whether, under the circumstances which I have given you, Wilhelm von Opel could

not have left Germany without losing his property in Germany and without losing his property in New York. A. Naturally, he could not lose his property in New York.

2091 Q. That is right. That is taken for granted. He has got that one way or the other. A. That is outside the reach of the German Government.

Q. Let us take the German property. What would have happened in 1931 to Wilhelm von Opel if he wanted to become a devisen auslander? Could he, first, become a devisen auslander? A. He could.

Q. He could? A. He could.

Q. What were the steps necessary to become one? A. He would have to hand in an inventory of his German property. He would have had to obtain clearance from the tax authorities. He would have to submit evidence that he intended to acquire a foreign residence and various other—

The Court: Mr. Boland, I did not get the impression that you got.

Mr. Boland: Your Honor, I reread the record last night.

The Court: Let me state to you the impression I got, and it may save you some time. I understood her to say that if he had disposed of a huge part of his estate to an auslander in violation of the exchange rules and left that country, they would penalize him by grabbing what he had then.

Mr. Boland: I think the record will show quite clearly—

2092 By the Court:

Q. Isn't that right? A. I think the assumption was that he had not foreign properties which were subject to the duty to tender to the Reichsbank.

Q. That is right. He had violated the decree, or some-

thing. A. No. The German securities located in New York were not subject at that time to such duties.

Q. I understand that. He could give them away? A. He could give them away.

Q. But if there came a time when it became his duty to report them and he did not report them and then left the country, then they would penalize him by taking what he had left there? A. Yes. That was my understanding that that was what I testified to.

Mr. Boland: May I recheck this, your Honor? My impression was otherwise.

The Court: Go ahead and ask your questions. I thought I could save you that trouble, because that was not the impression I had. Go ahead and ask you whatever you want on that.

By Mr. Boland;

Q. Well, my main point is that in October of 1931
2093 Wilhelm von Opel could have left Germany and become a devisen auslander? A. That is right.

Q. No. 1? Couldn't he? A. Yes.

Mr. Burling: Will you state whether this is before or after the sale?

Mr. Boland: This is on October 5, 1931.

By Mr. Boland:

Q. That he could have left? A. Yes.

Q. And that his property in Germany could not have been confiscated or subjected to anything other than normal taxes? A. Yes.

Mr. Boland: That is the only point I have, Your Honor, without going into an elaborate discussion of our other points.

The Court: Very well. We will adjourn until tomorrow morning.

(At 12:55 p. m. an adjournment was taken until Thursday, January 6, 1949, at 10 a. m.)

2097 PROCEEDINGS

Thereupon MAGDALENA SCHOCH resumed the stand and testified further as follows:

Cross Examination (resumed)

By Mr. Boland:

Q. Miss Schoch, I show you Defendant's Exhibit 115, which was identified and introduced, I believe, yesterday. Do you consider that an authority on German law (handing a document to the witness)? A. Yes, I do.

Q. Do you consider it a high authority? A. I would not say a high authority, but I would consider it a correct compilation and analysis of cases dealing with sham transactions.

Q. What dignity would you give it by way of comparison in American law? A. Well, that is hard to tell. I would consider it a useful compilation, with a brief statement as to what the courts decided in these cases that are compiled in the book.

Q. Yesterday, in discussing usufruct, the question arose about joint possession. Now it is clear in your mind,
2098 is it not, that joint possession is necessary in order to establish a usufruct as a right in rem? A. Under German law, yes.

Q. And that the usufruct remains in being, so to speak, only as long as the joint possession is present, is that right? A. Yes.

Q. No question about that under German law? A. No.

Q. Now, Miss Schoch, yesterday you testified, at page 2023 of the record and 2024, as follows, in answer to Mr. Burling's question:

"Question: Did you hear Professor Kronstein testify to the general effect that under German law it is difficult or impossible to make a gift reserving then and there a usufruct, and that the most that can be done is to make a gift subject merely to a charge?

"Answer: That is what I understood from his testimony"?

Do you recall that? A. Yes.

Q. And having testified in respect of a Supreme Court decision which you had with you, the following question was asked, on page 2028:

"Question: Before I go on to a different topic, it
2099 is clear, is it not, that it would have been possible for the parents Opel to have given the 600 Opel shares to Fritz von Opel burdened by a usufruct which came into existence simultaneously and instantaneously?"

Your answer:

"Yes; in my opinion, that would have been possible.

"Question: That is what the Supreme Court of Germany held in the case we have just discussed?"

Your answer is, "Yes."

Then, on page 2086 you testified as follows:

"The decision of this morning I think was submitted merely to show that a statement which I think Dr. Kronstein made, to the effect that a gift with a reserve usufruct cannot have been made in such way that you make the gift and at the same time the usufruct comes into being."

Do you recall that? A. Yes.

Q. And the entire purpose, as I understand your testimony, was to bring the Supreme Court decision to the attention of the Court for the purpose of discrediting Dr. Kronstein?

Mr. Burling: If your Honor please, I submit the purpose of the testimony is a matter which is determined
2100 by counsel and not the witness.

By Mr. Boland:

Q. Let me ask you the question: What was the purpose of bringing in the decision?

Mr. Burling: That is a matter within my brain, and not the witness'.

The Court: That is probably true. I guess maybe I can draw that inference, or else he could argue it.

Mr. Burling: I may have been inarticulate, Your Honor, but I did my best to state what the purpose was yesterday, and I am the only person who knows why I asked the question which I did ask.

The Court: You may ask her what her point was in bringing that case out.

By Mr. Boland:

Q. What was your point in discussing the case or bringing out the case? A. My point was to answer Mr. Burling's question.

Q. Now, had you read the record concerning Dr. Kronstein's testimony before coming in to testify? A. Yes, I had read part of the record.

Q. Did you read page 408? A. I do not know what is on that page. Would you mind showing it to me?

Q. Let me read it to you. On page 408 I asked
2101 the following question:

"Doctor, you have practiced in Germany for quite some time; would you explain to the Court what language

could be inserted in this gift agreement"—referring to Plaintiff's Exhibit 5—"in order to establish an immediate right in rem.

"Answer: All that would have to be done is to add one part, in which you say:

"'I, Fritz von Opel, herewith reassign—or assign—my claim against the depository of shares in New York to the Opel parents, with the understanding that it shall be a joint claim of the Opel parents and myself.'"

Then on page 409, continuing:

"And by this act Fritz von Opel would have to take out the shares under the name of the three; it would have been provided that he had to take these shares and put them in New York into a bank under the name of Fritz von Opel, Wilhelm von Opel, and Marta von Opel; or he could give it to the bank to keep it there, with instructions to keep it under the name of the three, and pay out exactly as it provided here. That is all that is necessary.

"Question: So that if the parties had intended the
2102 establishment of the immediate right in rem, it would have been a very simple thing, under German law?

"Answer: Very simple.

"Question: And it could have been done under this instrument itself?

"Answer: It could have been done, if the assignment was not made just as an outright assignment, but with the idea that it is reassigned to all three, it was already clearly an established right in rem."

Had you read that portion of Dr. Kronstein's testimony? A. I remember that portion, yes.

Q. Are you still of the opinion that Dr. Kronstein testified that you cannot establish a right in rem in a single instrument such as our gift agreement? A. The part of the record in which he said that a gift with a usufruct

reserve can only be a gift subject to a charge appears contradictory to this statement.

Q. You do agree that he made that statement? Do you deny that that is correct? A. I agree that he made the statement, certainly.

Q. And you do agree that he testified not on an abstract situation, but in respect of this gift agreement, Plaintiff's Exhibit 5; that he testified that an immediate
2103 right in rem could have been established with this gift agreement; is that right? A. He did, yes.

Q. And does the Supreme Court decision of Germany bolster that position? Does it sustain his position? A. Yes, it does.

Q. Therefore the case is brought in support of Dr. Kronstein, where it serves no purpose, is that right? A. I think it serves another purpose, too.

Mr. Burling: I again object to counsel's arguing with the witness. I will be glad to argue with counsel, and I say that Dr. Kronstein testified two different ways; but my purpose in asking an expert witness to testify is a matter which is certainly not appropriate for inquiry of the witness.

The Court: Well, both sides resorted to the practice of directing attention to Dr. Kronstein's testimony by name. I think the way to do it is to bring out what the law is. Whether it contradicts him or not, I will decide. I think it is cleared up.

Mr. Boland: That is the last question I have of that nature, Your Honor. I think it is.

By Mr. Boland:

Q. Now, Miss Schoch, it is your testimony that the mere use of the word "niessbrauch" in an instrument re-
2104 quires an interpretation of an immediate right in rem, under the German Civil Code? A. That is not my testimony.

Q. It is not? A. No.

Q. Would you explain what significance the word "niessbrauch" has in an instrument? A. The word "niessbrauch" has a technical significance. The word "niessbrauch" if used by a lawyer certainly requires the interpretation in the sense of an in rem right, unless there is strong indication to the contrary.

Q. Do you distinguish in your own mind, in using "in rem right," between an in rem right which may come into being in the future or one that comes into being immediately? Is there a distinction between the two things? A. No. An in rem right is a right which is either created now or which may be created in the future, depending on your agreement.

Q. Depending on the agreement, and in referring to Plaintiff's Exhibit 5 and in viewing the word "niessbrauch" in that instrument, it is your interpretation that the intent of the parties was that an immediate right in rem be established; is that true? A. That is my interpretation from looking at this document alone.

2105

Q. Now, if in fact an immediate right in rem, or, let us say, the institution of the usufruct, had not been created on October 5, assuming the contract dated and made on that date—that if the right in rem did not in fact become established on that date—it is your testimony that the contract is void; is that right? A. The contract is void if the right in rem formed an essential part of the gift and if the gift had not been made without the immediate creation of the right in rem.

Q. Now, directing your attention to page 1 of the gift agreement, you heard Dr. Kronstein testify that on the first page there were in effect two contracts; one was an obligatorischer vertrag and the other a dinglicher vertrag; one in effect the obligation created between the parties and the other the act of transfer; is that right? A. Yes.

Q. And you do agree that, under German law, under the concept of German law, there are in effect two contracts

on the first page? A. Well, I do not quite agree in this way of looking at the thing, but I agree with his conclusion that on page 1, if you look at nothing but on page 1, there was a valid gift.

2106 Q. Is it your testimony that there are not in effect two contracts? A. No; in my opinion, there is just one contract. My opinion is it is a present gift.

Q. Let us put it this way. The words "that I desire to give to you" and the words of acceptance would create what is known in German law as an obligatorischer vertrag; is that right? A. That is right, yes.

Q. And the so-called dinglicher vertrag were the words of actual conveyance, the act of transferring, with intent to pass title? You say that is not a dinglicher vertrag? A. Yes, it is, but, in my opinion—

Q. Does the word "vertrag" mean contract in German? A. Yes.

Mr. Burling: If your Honor please, we are construing one page of a three-page contract.

Mr. Boland: I am going through it page by page, Mr. Burling; and, if you will just bear with me, I will cover it.

Mr. Burling: If I may just say this, it does seem to me a waste of the Court's time to construe what you would read from page 1 when there are in fact three pages.

The Court: Of course, that is your argument. His
2107 is the other. I will give him a chance to bring it out.

Mr. Boland: I think it is important if there is a disagreement between what we testified to.

The Court: Go ahead. I will hear you gentlemen on it at a later time.

By Mr. Boland:

Q. Now, directing your attention to page 2, the first paragraph on page 2, that relates to the usufruct; right? A. Yes.

Q. Now, that, under German law, would be realizing that

the contract is signed by both parties; would be an obligatorischer vertrag; is that right? A. If it was intended as such.

Q. Yes. So that the only thing that is missing is another dinglicher vertrag, a reconveyance into joint-possession; is that right? A. Yes.

Q. And it is your testimony that of these four possible contracts, three of which have been set out in the gift agreement, that the dinglicher on the usufruct, not having been made, invalidates the whole thing; everything is void? Is that right? A. I said it could invalidate—

2108 Q. Oh, it could? A. —provided that the Court found that the gift would not have been made without the immediate establishment of the usufruct by delivery of possession; that that would be a question of fact for the Court to decide.

Q. And you say that if the intent of the donor was that he would not have made the gift—but for the establishment of an immediate right in rem, that he would not have made the gift—then under such circumstances it would be void? A. Yes.

Q. But, anything less than that, it would not be void? Is that your testimony? A. If as a matter of fact—

Q. Suppose he considered it important—

Mr. Burling: May the witness finish? She started to say, "If as a matter of fact," and I would like to hear the answer.

Mr. Boland: I will bring that out.

Mr. Burling: I would like to hear the answer.

The Court: Let her answer as far as she went and then let her finish.

By Mr. Boland:

Q. Go ahead. A. If as a matter of fact the Court found that what the donor intended and all he wanted was

2109 a promise to establish a usufruct in the future, then the non-delivery of possession—that is the establish-

ment of the right in rem immediately, presently—would not render the gift void.

Q. Does the German Civil Code specifically set forth the cases in which contracts are void? A. Yes, it does, and it has a specific provision concerning nullity of an entire transaction which is composed of several transactions if one of the composing transactions is void.

Q. What is the section? 117? That is sham, is it not? A. 139.

Q. 139? A. 139 of the Civil Code.

Q. In preparing your testimony did you make a study of any cases giving a practical application to this rule? A. Yes, I did.

Q. And it is your opinion that the gift contract in and of itself is clear and unambiguous that what the parties intended was an immediate right in rem? That is right, isn't it? A. Reading just the—

Q. Just the gift agreement, Plaintiff's Exhibit 5. A. Yes.

2110 Q. Now, I have a series of hypothetical cases which I would like to ask you. They are designed to find out whether or not in the case of an essential element which is lacking but intended the contracts are valid or void, and if the hypothetical is not clear to you, please ask questions.

Assume that A makes a contract with B, a contract of sale of real property, and assume that the contract of sale is notarized, and I take it under German law that binds the obligatorischer vertrag— A. That is right.

Q. —assume that for some unknown reason the act of conveyance is omitted, but the parties intend an immediate act of conveyance. Is this contract void under German law? A. I am not quite clear on the facts. The parties make a valid contract of sale?

Q. Well, I am asking you whether the contract is valid A. I mean, in valid form, notarized form?

Q. Notarized form. A. Notarized form.

Q. With the intent that the act of conveyance take effect immediately, and for some unknown reason the act of conveyance is omitted. Is the contract void?

2111 A. Not necessarily.

Q. Not necessarily? A. Because, again, this is a question of fact whether one is an essential element of the other or whether you have two transactions which are separate and independent of each other.

Q. Well, the intent was that they be combined into one, and you will agree that if I am to buy property from you and that if you give me a deed and the deed has not been registered with the Register of Wills, without which the act of conveyance does not take effect, that I consider transfer of title pretty important when I buy your real estate? You will agree to that?

Mr. Burling: I object to this line of questioning on the ground that the witness is testifying it is a matter of fact to the German court. The German law, I believe the testimony is—and I do not believe my friend will contest this—is that if there are two elements and each element is an essential element of the transaction, then the failure of one will cause the failure of the whole thing. If it is not an essential element, it won't.

The Court: I think you may go into cross examination of her, but I do not know why you go into real estate.

2112 Mr. Boland: This series of hypothetical cases will build up gradually to our case, Your Honor.

The Court: I know, but I do not know whether I should permit questions about real estate over objection of counsel. A rule on real estate might be quite different.

Mr. Burling: My point is that what counsel is in effect asking it what decisions of fact German courts have come to on the basis of a lot of evidence which we do not have here.

The Court: I will permit her to make that point, if that is the only objection. She can say she is not able to tell what the German law is until the Court has the facts. She can answer. The only point I had in mind is that I do not know if real estate helps us much.

Mr. Boland: The theory, of course, is that the act of conveyance is the establishment of a right in rem.

The Court: I know that, but you are talking about personal property here.

Mr. Boland: I have cases on personal property.

The Court: That is the one I think we should have.

Mr. Burling: My point is that what is being asked is what German courts have decided the facts were on the basis of evidence. It is like a negligence case—

The Court: That again is for the witness to say. She might very well say that on the facts that are
2113 assumed here, the answer is so and so. If she says otherwise, it will depend on what the German courts find on the facts, that answers the question.

Mr. Burling: Yes, Your Honor.

By Mr. Boland:

Q. Instead of real estate, let us go to a matter of personal property. Let us assume that A agrees to lend a sum of money, 50,000 marks, to B, which loan is to be secured by a mortgage or secured by stock. The word, as I understand it, is "hypothek."

You will have to bear with me on the pronunciation of these German words, Your Honor. It is difficult for an Irishman to get them across.

Let us assume that A agrees to lend 50,000 marks and that B agrees to secure the loan with the collateral of stock. Now, assume that A actually gives him 50,000 marks and that for some unknown reason the mortgage has not been established. Is that contract void under German law? We will assume, I believe, the additional element

that it is very important for A— A. The loan has actually been made?

Q. The agreement is, "I agree to lend you 50,000 marks, but at the same time I would like to have a mortgage in respect to shares of stock," and we will assume that the mortgage securing the loan is very important for me. However, I give you the 50,000 marks and for some unknown reason on the present state of facts, the mortgage has not been established. Under German law, is that contract void? 2114

Mr. Burling: It depends on what the agreement is. Does counsel mean that there is an obligation to repay the 50,000 marks or what? I do not understand.

Mr. Boland: I think the witness, if she does not understand the question, can say so.

The Court: I have some difficulty, Mr. Boland. I will give you the same protection Mr. Burling had in questioning the Doctor.

As I understand it, questions put to an expert, in order to be apropos, must be founded upon some evidence in the record, unless you are trying to test her qualifications. What we are interested in is not mortgages, not real estate, or delivery of them. As I understand it, these experts are just as you and I if testifying across the way on questions about tax laws. We have studied it for a long time. It might be that if we go over there we might be asked questions on real estate. The Supreme Court has decided any number of cases. I do not know whether that would be the way to do it.

Mr. Boland: Under the German Code this word "hypothek," which is the counterpart of the word "mortgage," is defined as a limited right in rem. It is an institution known in German law in the same fashion as is a niessbrauch. That is defined as a limited right in rem; and the use of the word "hypothek", under German law, in hypotheticals such as I have given, would 2115

have the same effect and be bound by provisions of Section 139 about essential elements wanting voiding the contract; and the purpose of this line of questioning is that if she agrees that in such instances the contracts are not void, I would like to then ask her how she distinguishes using hypothek, which is a technical institution in German law, in one sense and niessbrauch, which is a counterpart of a limited right in rem, in a different sense.

Mr. Burling: My objection is that there is an ambiguity in counsel's question. I do not understand whether he means that there is an obligation once he, in his hypothetical case, has paid the 50,000 dollars, on the part of the borrower to return it or, on the contrary, what other contract or obligation he is talking about. I think he is asking an ambiguous question.

The Court: I think the witness, if she has any difficulty with any of the assumptions, should be at liberty to say so.

Mr. Boland: That is one of the questions I asked.

The Court: I do not know whether I have quite
2116 gotten your point or not. I would like to follow you, because I would like it to be intelligible to me as you go along.

Now, you say there is a term used in this—What is the section? 139?

Mr. Boland: The section on hypothek is 1113 of the German Civil Code.

The Court: What does that word "hypothek" mean?

Mr. Boland: I can't define it myself.

The Court: What does it mean?

The Witness: Well, it is the equivalent of a mortgage. It gives a right in rem in the property—that is, the right to satisfy—

The Court: A mortgage. Is this section that you are referring to one that is used by the witness in connection with this case in any wise?

Mr. Boland: The witness has not used it in her direct case, no, Your Honor.

The Court: What I am trying to get at is the significance of the delivery in the case of a mortgage in comparison to the significance of the delivery in the case of a usufruct.

Mr. Boland: The whole purport or import of her testimony, as I gather it, is that niessbrauch is defined as a limited right in rem under the German Civil Code.
2117 Consequently, if the word is used by parties to any kind of a contract, what they mean was exactly what is defined in the German Civil Code.

The Court: I did not quite get that point of hers. I thought she said that if, from a reading of the instrument, the niessbrauch provisions obviously were conditioned upon the efficiency of the instrument, then the whole thing fell. I would think that would be our law. If, from the reading of the entire instrument, you have a provision which is defectively stated, whereas it is absolutely obvious to the reader of the instrument that that was an essential provision, then over here the whole thing falls, if that is what she is saying.

Then she says, if, on the other hand, you would read this instrument and that might be created in the future, then it would not fall. I think that is what she said.

Now, if there is any difference in the German and ours—I think that is our law, is it not?

Mr. Boland: I think that our law is that if you have got a gift agreement—and I am sure that this is the only way in which the German law can be interpreted—that if the sine qua non of the gift is an immediate right in rem, it is established immediately; and if it is not established immediately, the donor would not have intended the gift.
2118 I think it is clear. We will agree on that. We stipulate that.

Mr. Burling: All parties are agreed on that. I agree

with Your Honor on the statement of the German law and our law.

The Court: I think he agrees to that.

Mr. Boland: Yes.

Mr. Burling: I do not think there is any controversy on that.

The Court: I do not think there is any controversy on that.

Mr. Boland: I have been trying to get out of her this. These are designed to show how far from that you can get before you find that the contract is not void. Now, — the testimony of the father, Wilhelm—

The Court: It has to amount to an essential element without which the instrument would not hold. She has studied comparative law. Ask Dr. Kronstein, if he comes back, if it differs from our law in any regard in that respect. I think the law is pretty plain here.

If I make a gift that is obviously, from the reading of the words, conditioned upon a certain provision, and due to some technicality or some other act of delivery, it is ineffective, it is no good. We all agree to that. I think you said you agreed to that.

2119 On the other hand, if it says it is to be created in the future, then it is not invalid.

In the third place, if it does not depend upon the creation of this niessbrauch, then it has no effect; it is immaterial. I think we are all agreed on it. I am not sure.

Mr. Boland: Well, these cases, as I understand under German law, and I would like to bring this out through this witness, indicate that if the parties indicated an immediate right in rem, such as this hypothek, and for different reasons which are set up in hypotheticals—first, an unknown reason; secondly, they protect us; and, third, there was a kind of an understanding that they could take care of it later—but in the first case they intended it—and let us assume that it did not happen and the reason is not known, under German law, as I

understand it, the donor or lender can come in and sue for specific performance to have the thing established; but the fact that it was not in fact established does not void the whole contract.

The Court: I think that might be an appropriate line of questioning if you apply it to this type of case.

Mr. Burling: My point is that the question of whether an element is or is not an essential element to the whole transaction is one of fact and not one of law, and
2120 hence an inappropriate question to inquire about of an expert.

The Court: You might ask her if she regards it as an element or not. You may be right. She may differ with you. She may differ with me. I think he has a right to go into that. I think you have a right to develop that line—in other words, whether in a case of this sort, under certain circumstances, where the intent is perfectly clear, you could obtain specific performance and thereby not have it void.

Mr. Boland: That is the purpose of this.

The Court: Ask her the general questions and ask her what cases she had seen on it. That will help us both and help me to understand it.

By the Court:

Q. Let me ask you this. Do you understand what he is talking about? A. Yes, I do.

Q. He says assume your instrument indicates on its face that a niessbrauch plainly and obviously, as you say this indicates, was intended, but, through some technicality, delivery did not come to pass, and those words, which could very readily have been put in, had not been put in. Would it be possible for a German court, rather than declare the whole thing illegal, to bring about
2121 that delivery by specific performance; in other words, by the father's making a demand on him,

like the Doctor said he could do? A. That is perfectly possible, because the German court, having before it all the evidence, the surrounding circumstances, the intent of the parties, and so on, can come to the conclusion that the immediate establishment of this right in rem was not such an essential element of the contract that its failure voids the contract; in other words, that the intent of the parties can be interpreted as directed toward a future establishment of that right; and that therefore the transaction can be upheld. That is possible. And, again, I think it comes back to the question of fact of essentiality.

The Court: That gives me the lead I wanted. Go ahead, now.

Mr. Boland: All right.

The Witness: I was testifying only on the basis of what I had before me and not trying to put myself in the place of a Judge.

By the Court:

Q. I think Mr. Boland's point is, if I do not misapprehend it, that he says if you read this through carefully—you say, on one hypothesis, at least, this would be void because you thought it was an essential element
2122 or an essential provision which had not been brought into effect; the lack of delivery— A. I was asked to assume that it was an essential element.

Q. You were asked to assume that? A. Yes.

Q. You did not undertake to say that in this particular case it was? A. No; I did not try to decide the case. I was asked to assume that this was an essential element.

Mr. Burling: If I may remind you, the assumption is something which Wilhelm von Opel testified to. I asked her to assume that Wilhelm von Opel insisted upon the terms.

The Court: I understand that.

Mr. Boland: That is exactly what these questions are designed to bring out. Mr. Burling made the assumption that this was an essential element. I did not say sine qua non, or but for, or without which.

Mr. Burling: I made the assumption in the terms of the testimony of Wilhelm von Opel and Fritz von Opel, that the father insisted upon this over the protest of the son.

The Court: I think, Mr. Boland, I will give you all the latitude you want, every particle you want, so
2123 long as you hold it to an analogous situation to this. The only trouble I am having is that when you get off into mortgages and into real estate transactions, mortgages with regard to personality, I do not get very much benefit from it: I have not quite seen how it ties into this. I know your principle, I think.

You say you wanted to develop that in a case like this, where you assume these facts, there might be specific performance which would make it valid, or there might be a demand later on that would make it valid. That is what the Doctor testified to. You can go just as far as you like on that line.

Mr. Boland: It is section 139 which they are applying to this gift agreement, which is not applied to niessbrauch. It applies to everything—mortgages and anything—any contract at all.

The Court: That is what I was trying to ask you a moment ago.

Mr. Boland: Section 139 applies to all contracts.

The Court: You gave me another section. What does 139 say?

By Mr. Boland:

Q. Go ahead, Miss Schoch. A. 139 is the general provision in the German Civil Code which says that if an

essential part of the transaction is void, the entire
2124 transaction is void if it had not been made even in the absence of the essential part. That is the general provision.

The Court: You are trying to bring up some specific cases decided by the German courts on Section 139, Mr. Boland?

Mr. Boland: Yes, Your Honor.

The Court: I will let you do that. If she finds any element missing that she thinks is necessary, she can tell. That is all right. I have the connection now. I did not know what you were talking about. It is 139 you are talking about?

Mr. Boland: Yes, Your Honor. We have got to find out what 139 means, how it has been interpreted, in order to apply it to our gift here.

The Court: All right.

The Witness: My difficulty, Your Honor, is that the question of essentiality and of intent of the parties is a question of fact which was decided in each case on the evidence before the court.

The Court: As he gives you the hypothetical cases, if you have any element of fact missing, you can just say that you cannot give a conclusion without it. I think that is the way you can answer. Go ahead.

By Mr. Boland:

2125 Q. Let us go back to our assumption on mortgage. A agrees to lend you $50,000. I agree to lend you $50,000. I don't know very much about you; I just met you recently. In return for this sum, I require you to establish a hypothek in respect to some securities to back up the loan. Now, because of our mere acquaintance, it is very important that this hypothek be established, and, in fact, I give you the 50,000 marks without having estab-

lished the hypothek. Let us assume that the reason why it was not established is unknown.

Can you, under German law, make a determination as to whether or not the contract is void? A. No, I cannot make that determination.

Q. You cannot? A. No.

Q. What additional facts would you need? A. I would want all the additional evidence showing whether the establishment—immediate establishment—of the mortgage was an essential element, whether that was the intent of the parties—

Q. You are not helping me very much, Miss Schoch. What I want to know is—basically, what I am driving at is—how far short of this sine qua non, without which absolute intent this thing would not be done, it would be void on the part of the donor, the lender or the
2126 seller in real estate, for example? I agree that if the man's intent is that "I just will not give this money, under no set of circumstances," must an immediate right in rem be established. I agree with you. I think it is clear under American law that it would be void, or at least voidable, on the part of the donor; but what I am trying to find out is how short of that can the intent be on essentiality and still have the contract valid? Do you see what I am driving at?

Now, we can stay here all day on hypothetical cases, but if you can give me how far the German law goes in showing essentiality, in setting up the facts for essentiality, which will void the contract, and draw a line between those cases in which it would be void and the cases in which it would not be void—

The Witness: I think that depends entirely on the facts of each case.

Mr. Boland: I think, Your Honor—

By the Court:

Q. Let me ask you this leading question. Isn't the law, he wants to know, in Germany as it is here, that the court must find, in order to make that absolutely essential, that the contract would not have been made but for that provision? A. Yes; that is what Mr. Boland himself stated.

2127 The Court: Isn't that what you want?

By Mr. Boland:

Q. Well, is it clear in your mind that unless there is an absolute intent on behalf of the donor—an absolute intent that he will not enter into this transaction but for the thing, just no question about it—under those circumstances only is the contract void for want of an essential element? It is the primary thing involved in the transaction—but for, and the absolute sine qua non. A. Well, it is an essential element in the transaction. One element is the gift and the other element—

By the Court:

Q. Is it the primary or a primary? A. It is a primary; it is not the primary.

Mr. Boland: That is what causes the trouble here, Your Honor. When you ask her to set up the case, she gives "the primary." Then when you ask her what the law is, she says "a primary."

The Witness: No. You are talking about a gift, Mr. Boland, and, of course, one element of a gift is the gift. That is the intent, the giving, and the question is whether the establishment of an in rem right or any other element of this gift in addition to this gift is so essential—

By the Court:

2128 Q. Is the German law any different at all in that regard than the law of America? A. I don't think so, Your Honor. There are cases which have upheld such transactions despite the failure of one element, because the court did not consider it so essential that its failure wrecked the entire transaction. There are other cases in which the courts have held that the failure of such an element did.

Mr. Boland: Your Honor, I think we can bring this down. I will just skip these hypotheticals and get down to the case and get down to the facts in the case here and see if we can bring some light on this.

By Mr. Boland:

Q. Directing your attention again, Miss Schoch, to the gift agreement, on the basis of the gift agreement alone, it is your position that the parties clearly intended the establishment of an immediate right in rem? That is right? There is no question about that or no misunderstanding about that? A. No. That is right.

Q. Now, from that do you deduct that the parties intended to establish an immediate right in rem? A. Yes.

Q. Without more? A. Without more, as far as
2129 I can determine from this.

Q. Now, let us assume that the parties did not intend to establish an immediate right in rem, but they intended to establish something other than an immediate right in rem, going to the problem specifically a little later on, but let us assume that in fact they did not intend to establish an immediate right in rem, and assume that you have the gift contract and you have the further assumption that they did not in fact intend. Would a German court hold that contract void? A. No, I don't think so.

Q. It would look to the intent of the parties? A. It would look to the intent of the parties.

Q. Now, let me read from page 78 of the record. The donor, in his deposition, was asked the following question:

"'Question: I ask that the witness take a look at the fifth paragraph of Plaintiff's Exhibit No. 5'—that is the niessbrauch provision, I believe—

A. That is the usufruct clause.

Q. (Continuing) —"'The gift agreement makes reference to niessbrauch, doesn't it?

"'Answer: Yes.

"'Question: What did you intend by the pro-
2130 vision concerning the niessbrauch?

"'Answer: I intended to accomplish that my son takes care of me if I should suffer financial breakdown and have no money any more.'"

This is an English translation.

(Continuing) "'Question: Did you ever intend to ask your son for any money while you had enough to support yourself?

"'Answer: I never intended that.

"'Question: Did you ever intend to ask him to do any more than provide for you and your wife's support when you had no money?

"'Answer: No.'"

Now, let us assume that you have the gift agreement together with that intent, the intent of the donor—

Mr. Burling: You are now assuming that the witness, Wilhelm von Opel, whose testimony on direct examination you have just read, is truthful; is that correct?

Mr. Boland: Of course, Mr. Burling; of course.

Mr. Burling: That is open to doubt. I just wanted to make the assumption clear.

Mr. Boland: I did not think there was any doubt.

Mr. Burling: There is grave doubt on it.

The Court: I think that is always an assumption.
2131 Mr. Boland: We will just assume that.

Mr. Burling: I won't make the point again. It is understood, Your Honor, that when my friend refers to the testimony of either Wilhelm or Fritz von Opel, he adds the assumption that they testified truthfully?

The Court: The witness has to assume that these are the facts and the truth.

Mr. Boland: I am giving her the assumption that this was the intent of the parties, and we are assuming that Miss Schoch is giving a true account of the German law.

By Mr. Boland:

Q. You have the assumption? Would you like me to re-read it? A. No.

Q. Those are the only two things you have got, Miss Schoch. A. Yes.

Q. With that in mind, would you say the intent was to establish an immediate right in rem? A. No, I would not say that.

Q. How would you interpret the contract under such circumstances? A. I would further say that this intent of the donor is in no way spelled out in this usufruct
2132 clause in the agreement.

Q. And, under German law, what effect would that have? A. Well, then, I would say the donor cannot testify to an intent which is no way spelled out in the agreement. In other words, you can look to the intent of the parties only to the extent that it is somehow expressed in your agreement, in the document.

Q. Now, let me ask you this further question right here and now: If the language as used in the gift agreement is unclear and ambiguous, you can certainly look to the intent of the parties as to what it means? A. Yes.

Q. And if the language is ambiguous, the fact that it

is not spelled out in the gift agreement—the actual intent —would not preclude the court from taking the actual intent into consideration, would it? A. That is right.

Q. But your testimony is that because the language of the gift agreement is so clear and unambiguous as to what the parties intended, inasmuch as the actual intention being something other than that, and not having been spelled out, that the court would disregard the intent; is that it?

A. Yes; that is my testimony.

2133 Q. Thank you. A. In other words, that the intent of the parties was directed toward a usufruct. That is a right in rem.

Q. Now, let us assume that these additional facts are before the court, reading from the testimony of Wilhelm von Opel at page 111 of the record:

"'Question: Whose idea was it to include a provision for a niessbrauch in Plaintiff's Exhibit 5?

"'Answer: Unfortunately, it was my idea to insert the niessbrauch but it was interpreted differently than it was intended. This was intended to be a security so that he'"—referring to his son Fritz—"'should support me if I lost everything.

"'Question: When you executed Plaintiff's Exhibit 5 you wanted the niessbrauch provision in it did you not?

"'Answer: Yes.

"'Question: At the time the agreement was executed you thought it was important to have a niessbrauch, did you not?

"'Answer: I considered it important as a safeguard for me in my old age.

"'Question: Would you have made the gift to your son if there had been no niessbrauch provision in the

2134 agreement?

"'Answer: I would not have signed the agreement if there has not been a protection for me in it.'"

Let me read that again.

"'Question: Would you have made the gift to your son if there had been no niessbrauch provision in the agreement?

"'Answer: I would not have signed the agreement if there has not been a protection for me it it.

"'Question: Now you testified that the niessbrauch was included in the agreement so that your son could support you in the event you lost everything, did you not?

"'Answer: Yes.

"'Question: Where in Plaintiff's Exhibit 5 does it say that you were to have a niessbrauch so that your son should support you if you lost everything?

"'Answer: That is not stated here.'"

Now, assume that that is what the court has, the gift agreement and all of the testimony of Wilhelm von Opel. Does that help you in interpreting the contract? A. First of all, I would have to find out whether the agreement was drawn by a lawyer.

Q. Let us assume that it was. A. Assuming that
2135 it was drawn by a lawyer, as I said before, a lawyer using the term "usufruct"—

Q. Must mean a right in rem? A. Must mean a right in rem. A lay person might use the term "usufruct" for something else that would be a misnomer, but I cannot imagine a lawyer using that term for anything but a right in rem.

Q. And as a result of which, with these three things—the gift agreement, the assumption that a lawyer drafted the agreement, and the actual intent of the party, the donor—your conclusion was what? A. I have not stated my conclusion yet.

Q. I am sorry. A. With no other facts, I might come to the conclusion that what was intended was the creation of a usufruct in the future.

Q. In the future. Would it be possible that what the

party had in mind was an in personam claim against the son? A. That seems out of the question to me.

Q That is out of the question because a lawyer drew the instrument? A. Yes.

Q. Taking what the father said he intended, that is a possibility, isn't it—that what he wanted was a claim against the son for income in his old age? A. That
2136 is possible. He did not think in legal terms.

Q. I think that is clear. A. Yes.

Q. Therefore, what the father intended, just on his intent alone, it might well have been that what he was interested in was just some legal claim against the son in the event he was in distress in old age, without any money? That is possible, isn't it? A. Well, sure, it might have been possible.

Q. Just take his intent as he stated it, without more, and then relate it to the gift agreement as such and without the assumption that a lawyer drew it. It might well be the interpretation—

Mr. Burling: Is counsel now withdrawing the assumption?

Mr. Boland: Yes, I am. I will make it quite clear.

By Mr. Boland:

Q. We will drop the assumption that a lawyer drafted this agreement. In other words, Miss Schoch, what I want to do is to relate the intent of the father—

Mr. Burling: I object to this line of questioning on the grounds that the plaintiffs have produced two witnesses, one, Fritz von Opel, who said that he went to see
2137 the most eminent lawyer in Germany, who prepared a draft, and Fritz then testified that he talked over the draft which his father, and that the draft was the basis of the agreement, and then they produced Stansfield,

or Stansfield appeared, and he testified that he was a German lawyer and he had drafted it—

Mr. Boland: Your Honor, I am coming to these things. I wish Mr. Burling would let me handle the case in my own way.

Mr. Burling: Counsel's questions are contrary to the facts.

The Court: I will let counsel state his own hypothesis.

Mr. Burling: This question is contrary to his own hypothesis. Their witness testified that Hachenburg prepared the draft as a result of a conversation with Fritz von Opel, and as a result of the draft, Wronker-Flatow, or Stansfield wrote it.

The Court: I won't take time to check the whole record now. You can argue later that it is not applicable. What he wants to know is if Mr. von Opel in effect misconstrued the technique of this language and had the intent, as he testified, to—

Mr Boland: What effect it has under German law.

The Court: What effect would that have?

2138 The Witness: The mere use of the term "usufruct" by a layman who is not familiar with the law does not necessarily mean that what he intended was to create a right in rem. It might well be that he meant just income as a right in personam and used the wrong term.

By Mr. Boland:

Q. So that with these two things in mind, it might be, under German law, that the courts would interpret the contract as an in personam claim against the son; is that right? A. On the assumption that this was made without the assistance of lawyers, yes.

Q. So that the immediate right in rem comes into play only on the basis that a lawyer drafted the instrument? That is the significance you give to that one assumption that a lawyer drafted the instrument; is that right? A.

I attach significance to that assumption in interpreting the term "usufruct," yes.

Q. In interpreting the term "usufruct" in this gift agreement? A. Yes.

Q. The fact that a lawyer drafted the agreement? A. Yes.

Q. Now, I would like to add one more element, and
2139 I now quote from the cross examination of Fritz von Opel at page 825 of the record. In stating his discussion with Dr. Hachenburg and what was actually discussed with the Doctor, between Fritz and the Doctor, during the course of this proceeding on cross examination, he stated as follows:

"And I also repeated what in effect my father wanted, not in legal language, and, for example, my father, the words my father told me, he said: In Paris you find the doorman in front of your door which ten or fifteen years before is a rich price, and now, all of a sudden, these princes are waiters or taxi drivers, or doormen, and my father wasn't sure what was going to happen in Germany, and so he told me if the day should arrive where he had to flee Germany, and where I might arrive in a foreign country, maybe with nothing in my hand but a paper bag, I then want some legal hold on income, and you at the time might be dead, and I might have to fight it out with your family, and so even if you are alive I want some legal strings, and if I have to appear as a begger and ask you for money, I want some legal strings so that I can legally obtain what is due to me, and these words I explained to Dr. Hachenburg, and he put them into legal language, and the result
2140 is this gift agreement."

Now, let us take the testimony of the father, the donor, and the testimony of the donee and put the two things together and take the gift agreement. Does that shed any light by way of interpretation? A. No, it does not shed any additional light.

Q. We are just where we were before? A. Yes.

Q. Now, let us take the testimony of Dr. Stansfield, at page 118 of the record, on questioning of Mr. Burling—

Mr. Burling: What page?

Mr. Boland: 1188.

Mr. Burling: You said 188.

By Mr. Boland:

Q. Mr. Burling's question is:

"I wish you would give us an idea of what he said to you," Mr. Burling referring to what the father, Wilhelm von Opel, had said to Wronker-Flatow.

"Answer: He said he wanted to protect this part of his family, his son, to have something for him that would take care of Fritz, who had been removed from his position in industry and so on.

"Question: That is not in response to my question.

"Answer: You will be good enough—you are ask-
2141 ing me—

"Question: I want to know the substance of what Wilhelm said to you about a usufruct.

"Answer: And in that connection, as I just now said, although he was taking care of Fritz, he at the same time wanted to protect himself in case Communists or Nazis should take over, or in case of all kinds of contingencies that nobody could definitely specify at that moment. So he wanted to have a possibility of going to Fritz and saying, 'Now, I want a usufruct, and here'—and didn't have to beg for it.

"Question: So you put a usufruct into the terms of the agreement, is that correct?

"Answer: That is correct.

"Question: You used the following language, did you not:

"'The usufruct in the shares is no assigned to Fritz von

Opel, it remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the survivor of them * * *'.

"When you drafted those words, what did you think their legal significance was?

"Answer: This would give Mr. von Opel and Mrs. von Opel the right any time to ask Fritz von Opel to create a property right."

2142 Now we have what the lawyer who drafted the instrument said. Does that shed any light? A. He says that he cast the intentions and wishes of the parties into a legal form which would give the parents a property right, which is a right in rem in the corpus of the gift.

Q. Is it your testimony, Miss Schoch, that on the basis of those three statements the donor, the donee, and the person—the lawyer—who drafted the instrument, plus the gift agreement, itself, a German court would hold this entire contract void because, in fact, a right in rem was not established immediately? A. It might.

Q. It might? A. It might, yes.

Q. Have you any authority for that? A. Just the authority of section 139 of the Civil Code.

Q. What is that a definition of? A niessbrauch? A. No; that is the definition of a void transaction when one of its elements is void.

Q. Have you ever heard of the theory of conversion? A. Yes.

Q. Would that have a bearing on this? A. It has a bearing on this insofar as it is consistent with the intent.

2143 Q. I think it might be well for you to explain to the Court what the concept of the theory is. A. The theory is that if consistently with the intent of the parties and the agreement that has been made, you can interpret the agreement in such a way that it is valid, you may do so.

Q. My question now is, would that have any effect under such a set of circumstances as I have given you: the testimony of the donor, the donee as to what the father intended, and the lawyer who drafted the instrument as to what he intended, plus the gift agreement? A. Well, I think these facts or those assumptions might lead the Court to hold that the gift was void—was valid, even though the right in rem was not immediately created, but that either what was intended or what the parties would be assumed to have intended was a future creation of a usufruct.

Q. Would you venture an interpretation, under such a set of circumstances, as to whether it might be an in personam claim; and under the three possible interpretations that Dr. Kronstein gave, would you say that under such circumstances it might be that the Court would apply one of those three interpretations? A. I would say this: I would say that the Court might interpret this as an obligation to establish a right in rem. I cannot see
2144 that the Court could interpret it as a mere right in personam—that is, a mere monetary claim.

Q. That is because the lawer drafted it—

The Court: She thinks the weight of the evidence is that way, I suppose.

By the Court:

Q. Isn't that what you mean? A. I think the fact that a lawyer drafted it was one of the elements.

By Mr. Boland:

Q. I think you already testified that assuming a lawyer had not drafted it and that Wilhelm von Opel had used this term not knowing it was a word of art— A. Then it might be a right in personam.

Mr. Burling: I move to strike that. Wilhelm von Opel has personally testified, through depositions, that he based his work on the work of the most eminent lawyer in Germany.

Mr. Boland: We are coming to him very shortly, Mr. Burling, if you will bear with me.

The Court: I understand that is your contention. It is quite hard to tell exactly what state of facts a German court would arrive at without seeing the witnesses or hearing cross examination. That is the difficulty. I think he said quite plainly that this obviously—that if it did become obvious to the German court that this language right
2145 here was language which was mistakenly used by the lawyer, and that after having a full and complete explanation made by both of these parties that they had mistakenly put that in there, and that Mr. Wilhelm von Opel had completely misunderstood the meaning of that, then it would have a very material bearing on the question whether a right in rem was created or was not.

On the other hand, I think that perhaps she thinks the German lawyers would not have made such a mistake.

By the Court:

Q. Am I correct about that? A. I am not quite sure whether I understood the last statement you made.

Q. I think you are holding to the view that those German lawyers would not have made such a terrible mistake—isn't that what you mean—having put in their understanding? A. Yes; I think a German lawyer using the term "usufruct" and providing for a usufruct knows what he is talking about.

Q. I know he knows what he is talking about. But if those people told what Mr. Boland has assumed they told him, they would not have written that down? A. If they told him this, he would have told them the way in which

to give them protection or to do what you want
2146 to do.

The Court: We are saying the same thing. That is the difficulty I have. I think you have gotten it correctly. I think the assumption that Mr. Wilhelm von Opel had definitely and unequivocally in his mind that he simply wanted to create the right he said he did when he gave his facts, and these lawyers translated that and put it into words that had a different significance—

Mr. Boland: The lawyer testified in this case.

The Court: I know. (Continuing) I think that is bad. But she has testified that that is unquestionably so, and that a German court would hold that that would be a right in rem.

The Witness: Yes, but—

By the Court:

Q. I know your "but" side. But the other side is that if these brilliant lawyers had been told what he wanted, they would not have drawn such a silly thing in there; and therefore Mr. Wilhelm von Opel did not tell them that. A. I am not trying to assume he did not tell them that, but I assume they told him and explained to him that the way to do it was by way of usufruct, and therefore they adopted the usufruct device.

The Court: All right.

By Mr. Boland:

2147 Q. Now, yesterday Miss Schoch, Mr. Burling asked you the following questions, at page 2045:

"Question: Do you see anything in the Hachenburg papers which indicates that it was the intent of the parties

to obtain a right, an in personam claim for income, coupled with the right that they could at same point in the future, if they felt like it, create a usufruct in order to secure that claim?"

Your answer: "No, I cannot read that interpretation from the Hachenburg papers."

"Question: Do you see anything in the papers—in the Hachenburg papers—where Hachenburg said anything about such an intent?"

"Answer: No."

"Question: Are the Hachenburg papers consistent or inconsistent with that hypothesis?"

"Answer: I think they are inconsistent."

You testified further, at page 2085, as follows:

"Under a gift agreement, which is Exhibit 5, the usufruct did not come into being because the reassignment of this delivery was not put in, was omitted."

Do you remember that testimony? A. Yes.

Q. Let me clarify that. The quotation at page 2085 was not in connection with the Hachenburg papers. A. 2148 Oh, I see. I did not quite see the context.

Mr. Boland: I will show the context shortly. May I have Plaintiff's Exhibit 8, Mr. Yates?

(The deputy clerk handed a paper to Mr. Boland.)

By Mr. Boland:

Q. Now, I show you Plaintiff's Exhibit 8, which has been referred to as the Hachenburg draft, Miss Schoch. A. Yes.

Q. I think we all recognize that Dr. Hachenburg was an outstanding and leading lawyer in Germany; is that not true? A. He certainly was.

Q. We have all agreed to that. Now, if the parties,

Miss Schoch, had actually signed this draft—if the parties had actually signed this draft—would there have been a valid gift under German law? A. Yes.

Q. Do you find any words on reconveyance into joint possession in this draft? A. No.

Q. How do you explain that? Why is it valid? A. The gift is valid because the title to the shares was validly assigned from the donor to the donee.

Q. As in Exhibit 5? A. Yes; and there is nothing that I can see in this draft which, if the draft were signed
2149 by the parties, would make it invalid.

Q. In other words, it is your interpretation of the Hachenburg draft that Dr. Hachenburg did not intend to create an immediate right in rem; is that right? A. Yes.

Q. Why do you come to that conclusion? Will you point out the language? A. Section 2: "Donors reserve to themselves for life the usufruct in three quarters, i.e., in par value, reichmarks 4,500,000 of the donated shares. The balance of reichmarks 1,500,000 is exempt from the usufruct. Donors' usufruct expires at the death of the last parent."

Q. From that language, you would state that it is clear that Hachenburg did not intend an immediate right in rem; is that right? A. It is clear to me, because I am convinced that Dr. Hachenburg, if he had intended immediate creation of a right in rem, would have put in the words of reassignment.

Q. Miss Schoch, would you direct your attention to the first paragraph on the second page of Plaintiff's Exhibit 5 and read that aloud, please? A. "The usufruct in the shares is not assigned to Fritz von Opel; it remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the death of the survivor of them.

However, 20 percent of all dividends and interest
2150 received will accrue to Fritz von Opel."

Q. What you just read from was Plaintiff's Exhibit 5; isn't that right? A. Yes.

Q. Would you explain to me how you can say that if the Hachenburg draft, on the basis of—

Well, let me ask you this: Would you say that the language you have quoted from the Hachenburg draft in Plaintiff's gift agreement, Plaintiff's Exhibit 5, was similar in nature? A. Similar, yes.

Q. What is the distinction between the language in Plaintiff's Exhibit 5 and Plaintiff's Exhibit 8, the Hachenburg draft, which leads you to the conclusion that if Hachenburg's draft had been signed, even though there were no words of reassignment, it would have been valid, and Wronker-Flatow's draft, that was signed, is void because it intends an immediate right in rem which was not in fact created? Take your time and speak slowly, so that we can understand it. A. The different conclusion to which I come is not based on this specific paragraph but is based on the entire Hachenburg draft. It is based on the fact that the Hachenburg draft spells out a device for bringing the usufruct, which he has in mind, into being by way of the holding company.

Q. So you testified, did you not, to my question,
2151 when I asked you the question, that you could not point out language in the Hachenburg draft which shows that if this agreement had been signed, it would have been valid without words of reconveyance, as distinguished from Plaintiff's Exhibit 5? You read a paragraph which is quite similar and practically identical to the language in Plaintiff's Exhibit 5, did you not?

Mr. Burling: The witness also testified that the holding company provisions are in—

Mr. Boland: She just added that. I think we can go back and have checked in the record exactly what the question was.

By Mr. Boland:

Q. The question was, Would you point out to me the language by which you state that Hachenburg did not intend an immediate right in rem?

Mr. Burling: If Your Honor please, the witness then said it was because of the holding company provision which is in Plaintiff's Exhibit 8.

Mr. Boland: I agree, Your Honor, that the witness just added that; but I would like to know if she did not answer my question by pointing specifically to this reservation language.

Mr. Burling: If Your Honor please, the record is the best evidence of that. My recollection of what took place 30 seconds ago is that a particular paragraph was shown, and she was asked, "Is this similar to what is in the—"

The Court: I heard her say that.

2152 By the Court:

Q. You go ahead and give your interpretation of that. What is the language that makes the difference? A. Well, there are certain differences. For instance, Exhibit 5, the fifth of October agreement, speaks of the usufruct, meaning the usufruct in the entire corpus of the gift; whereas the Hachenburg draft provides for usufruct in 75 percent of the stock only. That is, he gives the parents usufruct in 75 percent, not the entire.

The agreement of October 5 gives Fritz von Opel 25 percent of all dividends and interest received, which to me looks rather like an in personam right of Fritz von Opel against his parents. That is what the October 5 agreement—

By Mr. Boland:

Q. Looks like an in personam right? A. A right of Fritz von Opel against his parents for 20 percent; whereas the Hachenburg draft clearly would establish usufruct in 75 percent.

Q. Of course, it is clear from the first page that it could not be an in personam right on behalf of Fritz von Opel against his parents, I take it; is that right? A. No, not at all.

Q. In other words— A. If they reserve the entire
2153 usufruct to themselves and give him only a claim for 20 percent of the income, which they are prepared to do, then—

Q. I see. Have you finished explaining why if Dr. Hachenburg's draft had been signed there would have been a valid agreement? A. Well, I think I have explained it.

Q. Even though words of reassignment are not there? A. Yes, because the Hachenburg draft, other than the October 5, agreement, makes it clear that the usufruct is to be created in the near future through the holding corporation device, and the Hachenburg draft spells out the manner in which the usufruct is to be created.

Q. If you will take Plaintiff's Exhibit 5 and Plaintiff's Exhibit 8, Miss Schoch, and read the two of them and compare the two of them, do you think it would be reasonable to assume that the lawyer who drafted the final gift agreement, Plaintiff's Exhibit 5, on the assumption that he had before him Plaintiff's Exhibit 8 at the time he drafted it—that he in effect was using the language of Dr. Hachenburg, which appears in the first paragraph under section 2, I believe?

Mr. Burling: If Your Honor please, I think we could save a great deal of time. The defendant's contention primarily is just exactly, I think, what Mr. Boland is now asking. We contend that the gift agreement which was
2154 actually signed is merely a provision of the Hachenburg draft. We get into this point of total conveyance at the outset ab initio, only if it is contended that the Hachenburg draft was disregarded and some other document substituted by Wronker-Flatow. If my friend will

concede, as he now appears to be saying, that the Hachenburg draft is the basis—

Mr. Boland: Not necessarily. We will concede that Wronker-Flatow had the Hachenburg draft before him at the time he drafted the instrument. We will also concede that in the course of preparing this, and prior to that time, there was a memorandum of fundamental considerations which basically set out the ideas, which was also before Wronker-Flatow, perhaps in advance of the date on which he drafted the instrument.

I do not think there is much trouble there. You will see my point in a minute, Mr. Burling.

By Mr. Boland:

Q. Is it reasonable to conclude that the language in the first paragraph of section 2 came from—pardon me; the language of the first paragraph of page 2 of Plaintiff's Exhibit 5 came from the first paragraph of section 2 of Plaintiff's Exhibit 8? A. Yes.

Q. Is it usual, Miss Schoch, under German law, to use the term, "the usufruct is reserved"? If you were writing a usufruct provision, would you use the word "re-
2154 reserved"? A. That term is quite often used in Germany.

Q. You do not think that lends any uniqueness to it? A. No, not at all. A gift with usufruct reserved is quite usual.

Q. Let us assume the following fact: Assume that the father and son came back—came to Wronker-Flatow—for the purpose of entering into a final gift agreement on October 5, 1931; that having received the draft, Plaintiff's Exhibit 8, from Dr. Hachenburg, there was discussion about it; and that Wronker-Flatow, being the attorney at that time, stated, "The important thing is speed. The important thing is speed. Let us get this accomplished"; they then finish discussing the holding company; the father is

not sure about the holding company; and there is some discussion; but, at any rate, Wronker-Flatow says, "Let us forget the holding company. You can work out an arrangement along that line later on. The important thing is to make a gift."

On that assumption the parties took Hachenburg's draft and deleted the provisions concerning the holding company.

The German court, having the intent of the parties before it, such as I have given you—the statement of the lawyer who drafted the instrument and the Hachenburg papers before it, plus this gift agreement—in your opinion, would the German court hold that gift agreement void?

A. No. I think I have testified to that effect yester-
2156 day.

Q. You think they would hold it valid? A. Yes.

Q. Assuming they would hold it valid, how would the instrument be interpreted under these sets of conditions I have given you: the testimony of the father, the testimony of the son, the testimony of the lawyer who drafted the instrument, and the stipulation that the Hachenburg papers were drafted in connection with the gift agreement and actually present before Wronker-Flatow when he drafted this instrument? How would you interpret the first paragraph on page 2 of Plaintiff's Exhibit 5? A. The first paragraph?

Q. On page 2 of Plaintiff's Exhibit 5. A. On page 2?

Q. Of Plaintiff's Exhibit 5, I think, which is usufruct.

A. Oh, yes; usufruct.

I think I explained in my testimony yesterday, in the light of the Hachenburg agreement, I would interpret this usufruct clause as a provision for a usufruct to be established.

Q. In the future? A. In the future.

Q. Is it true that under such circumstances actually the legal effect of such interpretation would be an in

personam claim of the father and mother against
2157 the son to establish a usufruct in the future? A. That is right.

Q. And that if the intent of the parties was given any weight, it would be interpreted as to be created at a time when the family was in distress or distressed financial circumstances? A. No.

Q. No! Not necessarily? A. No, because that intent is in no way spelled out either in the Hachenburg draft or in the instrument itself.

Q. Would the fact that the father was independently wealthy—and let us assume, taking his capital alone and disregarding his income, that it would take over 250 years to spend the capital at the rate he lived, without touching the income, would that fact be given any weight in the German court in interpreting this contract as to its validity or voidness?

Mr. Burling: You are also assuming that the property being given was exchangeable into foreign exchange, so that it would be somewhere other than in Germany?

Mr. Boland: I am talking about his German property.

The Court: He is trying to get at the fact that the father needed money for any particular use.

Mr. Boland: The fact that he did not need any money.

The Court: The fact that he did not need any
2158 money for any particular use.

The Witness: I do not think so, because why would they make that provision? Why did the father want this usufruct?

By Mr. Boland:

Q. That is the very question I have in my mind, Miss Schoch. Here is a man who is independently and on his own very, very wealthy. As far as he can see, unless someone comes in and takes over all his property and assets in

Germany, he is never going to have to call upon his son for any money.

Therefore, it seems to me a question might well be raised in the German court as to what is the meaning of 80 percent? Would the father really want 80 percent of the income from the time of the gift agreement of October 5, 1931?

Mr. Burling: I feel, if Your Honor please, that if we are going to have assumed facts in a particular case, then the witness should also be asked to assume the remaining facts, which were testified to by Fritz von Opel, Wilhelm von Opel, and Wronker-Flatow, that the father was constantly obsessed with the idea that Russian Princes had become taxi drivers in Paris and that he might have to flee Germany.

The Court: You can ask her about that hypothesis on redirect.

Mr. Boland: I do not think she has the point.

The Court: I think she has.

2159 The Witness: Maybe I have not; I am not sure.

By the Court:

Q. He wants to know, assuming all those facts you have been assuming—the two papers drawn by the two different lawyers and all the circumstances that have been related by him in his question, and the testimony of the father and son, and so forth—he wants to find out, if that matter came into court, would the financial status of the father have any bearing on the interpretation? A. I do not think so; it would have no bearing on the interpretation of a right in rem which is to be created by a holding company.

By Mr. Boland:

Q. You do not think, then, that under German law the fact that the donor was independently wealthy would have any bearing in interpreting whether or not the intent, as

stated in this gift agreement, was for an immediate right in rem or for a future right in rem? Don't you think that that would be given some consideration? A. All depending on the remainder of the facts and on the entirety.

Q. We have already come to the conclusion—without that, we come to the conclusion—that what the intent was was to create a usufruct in the future—at some time in the future. A. Well, I think I said a little more
2160 than that. I think the intent, in the light of the Hachenburg draft, was to create a usufruct in the near future.

Q. And therefore the contract was not void? A. No, it was not void. I am not talking about invalidity; I am now talking about the intent of the parties and the purpose of this usufruct clause; and the fact that Dr. Hachenburg elaborated the holding corporation device for the realization of the usufruct seems to me to point to more than a mere something that was to happen in the remote future, when the father might become destitute.

I just cannot see the transaction in the light of those drafts otherwise than as a very definite plan for the near future. The transfer of the Opel shares that were in New York, the holding corporation, and the various provisions spelled out by Dr. Hachenburg—in the light of those I think the fact that the father at present was a rich man did not make much difference in Germany.

Q. I want to see how far you go in this. Taking the gift agreement alone, Plaintiff's Exhibit 5, Hachenburg's papers, Plaintiff's Exhibits 8 and 9, I believe—on those two things alone, on the basis of the Hachenburg papers, so called, and Plaintiff's Exhibit 5, is it your testimony that the Court would interpret the gift agreement as a right to call upon the donee in the future to establish a
2161 right in rem? Is that your interpretation, without more? A. Yes.

Q. It is. A. Yes.

Q. Then, under German law—that is, even without in-

tent of the parties being present, but on the basis of this —you would conclude that the parties intended to create a right in rem in the future?

Mr. Burling: May I ask counsel to state when the future is? 12 o'clock is in the future—12 o'clock today. So is the millenium in the future.

Mr. Boland: That is exactly what I am getting to. You just bear with me. I am sure I see this picture as well as you.

The Court: You can ask her on redirect.

By Mr. Boland:

Q. On the basis of the Hachenburg papers and the gift agreement, you think it is clear, under German law, that the contract would not be held void? A. Yes. I think I have said that a number of times.

Q. Question No. 2: The parties intended to create a right in rem in the future, without defining the future. Let us say 5 minutes in advance, 10 minutes, or 15. But at least it would not be held void due to the fact it was not created immediately.

2162 Now, isn't it somewhat significant, and wouldn't it be given weight, that the father was independently wealthy and needed no money; that it would take him 250 years to spend what he had now at the present rate of his spending money—and he was 65 or 70 years old, although probably a little younger than that at the time of the gift, but he was in his upper years. Wouldn't that be given weight as to how far in the future? A. Well—

Q. I realize we are dealing with a difficult thing. It is a question of degree. A. It is a question of speculation.

Q. But we are not talking about 5 minutes. A. I would like to point out this: Having before me the Hachenburg papers, and seeing that Dr. Hachenburg has spelled this

thing out, Dr. Hachenburg, of course, realized that the parents did not want the income immediately, which they would have to tender to the German Reichsbank, and which would become reichsmarks, on which they had planned anyway. That is, I think, why Dr. Hachenburg put in the provision that the father was to have the right to vote on this 75 percent of the stock in which he held usufruct, and that he had the right to vote not only on dividends but also on the use to be made of these reserve funds of the holding corporation, so that all the father had to do was to vote that no dividends were to be
2163 distributed, and the net profit of the corporation was placed into a reserve fund, as provided by the Hachenburg draft. In this fund the net profits of the corporation would accumulate for the father, so that in the future, when he had to leave Germany or became destitute, he could draw those funds.

Q. Well, I just have a few more questions, Miss Schoch. Is it usual, under German law, or unusual, or is it unknown, to use the word niessbrauch in respect of securities as a mere right in personam? A. I don't think there is any definite use. I mean the ordinary use of usufruct is to denote a right in rem. It may be possible that nonexperts or lay persons might talk about usufruct meaning a right in personam.

Q. But a lawyer you would not expect to talk of usufruct? A. In the case of a lawyer, I definitely would not.

Q. In preparing your testimony, Miss Schoch, did you consult commentaries on the B. G. B.? A. Yes, I did.

Q. Did you consult the so-called Staudinger? A. Yes, I think I did.

Q. Do you recognize Staudinger as a reliable report on German practice? A. It is one of the leading commentaries on the Civil Code, yes.

2164 Q. Would you translate, please, section 8 on page 832? I direct your attention to that section. Have you read that before? A. Section 8 on page—I don't

know what edition that is. That is the ninth edition of the Staudinger.

Q. It just has a figure 8. A. Yes; this note on 8, page 832, is as follows. This is just an offhand translation.

Q. Yes. A. "The main substitute forms for a usufruct in practical life are the following: A."—

Q. Is there a reference there to Nussbaum? A. There is a reference to Nussbaum.

Q. Do you know what Nussbaum that is? A. Yes, I think I know. Without looking it up, I assume that it is a book by Nussbaum published in 1919, in which he discusses the practical importance of usufruct as an institution in German law.

Q. Is he the same Nussbaum who was at Columbia? A. Yes.

Q. Would you go on, then? A. "If somebody desires to procure to another the enjoyment of the capital, whether it is rested in securities or in mortgage, for life or for some other period of time, frequently the form of the usufruct does not suit him, because it grants to the
2165 usufructary far reaching rights with respect to the capital itself."

Then he refers to section 1077 to 1079 of the Civil Code. Do you want me to read on?

Q. Yes, please, just a little more. A. "The grantor will then prefer to choose the less burdensome form of a mere obligatory agreement—that is, of an agreement for a mere right in personam. Such a mere right in personam may be meant under given circumstances where the parties use the term 'niessbrauch'—where the parties themselves have used the term 'niessbrauch.'".

Again, there is reference to the book by Nussbaum.

Q. Would you not state, as a result of that quotation from Staudinger, that the use of the word "niessbrauch" does not necessarily mean a right in rem? A. I conclude, what I have already said, that the term as used by a nonlawyer might mean in personam.

Q. You think that that book supports what you have already said? A. Yes; but as used by a lawyer like Dr. [illegible]burg, it certainly would indicate a right in rem.

Q. Is Staudinger a report that is used by lay people or attorneys? A. It is a legal commentary, but he does not say who the parties were in the cases or hypotheses.

2166 Q. So would you say that that statement merely bolsters your position that lay people using the word "niessbrauch" might not mean right in rem? A. Well, I could possibly think of a very inexperienced or poor lawyer; but Dr. Hachenburg, in the year 1931, I think, could only mean a right in rem.

Q. Miss Schoch, let us assume that the parties did, in fact, intend to create an immediate right in rem and that, in fact, an immediate right in rem was not established. A. You mean with regard to the usufruct?

Q. Yes. I am referring to Plaintiff's Exhibit 5. Assume, further, that but for the establishment of the immediate right in rem, the donors would not have given the gift. I think that is a glaring example of what was then section 139, as I understood you; is that right? A. Yes.

Q. Would you like me to read this? A. Immediate right in rem is an essential of the gift.

Q. I do not like using "is an essential." A. I mean is the essential. Well, one essential is a gift.

Q. It is a "but for." It seems to me there are many things that can be an essential, but not a "but for the gift."

The Court: You had better ask the question and see if she can answer you that way.

2167 By Mr. Boland:

Q. Assume that the parties did anything to create an immediate right in rem but, in fact, the immediate right in rem was not created. I am assuming a very

strong point. But assume further that but for the establishment of the immediate right in rem, the donors would not have given the gift. A. Yes.

Q. I think that is clearly within section 139, according to your testimony, is it not? A. Yes.

Q. Then, assume that approximately 4 years thereafter all of the parties, realizing that the right in rem had not in fact been established, not only ratify the gift to the son but decided that they did not want anything further to do with the niessbrauch. Would that have any significance under German law? A. Well, we have shown that due to the failure of the usufruct, the gift failed at the time. You want me to assume that?

Q. Well, I want you to draw your own conclusions. I am just stating that. A. For the purpose of discussion, I am now assuming—

Q. I think under your testimony you would have to state the contract would be void; that the usufruct failed.

The assumption of fact is that the right in rem was
2168 not created; it was just not created as a fact. A. All right. If I have no other facts, I would say, assuming it was essential to the gift, and that the gift failed, no title passed at the time from father to son.

Naturally, any time the parties realize the nullity of the transaction they have made, they can, as it is sometimes called, ratify the transaction. A more precise term would be that they can make a new contract; they can make a new gift. That, without anything further, could have been done in this case.

Q. Is that known as confirmation or ratification in German law? A. It is sometimes called ratification, but what is meant is the conclusion of an entirely new agreement, the making of a new gift.

Q. Now, let us assume this: First, that the gift of October 5, 1931, was actually void because the word "usufruct" was used and no right in rem was established.

Now let us assume that in 1935 Fritz von Opel, the son,

made an attempt to establish a right in rem, but that the Opel parents did not accept this usufruct.

Would that have any significance under German law? A. Well, first of all, you state he made an attempt to establish a usufruct, and your theory would be that by the establishment of the usufruct in 1935 the gift
2169 would become a valid gift?

Q. I do not have a theory; I am just asking a question. A. I have difficulty in my assumptions.

Q. Yes. In 1931, October 5, let us assume the parties intended an immediate right in rem and that it was a sine qua non of the gift. Under section 139 of the Code it would be void, because they did not establish it? A. Yes.

Q. Let us assume that in 1934 or 1935 the donee under the gift, having received possession actually and kept possession for 3 or 4 years, actually attempted to establish a usufruct in favor of the parents. A. Yes.

Q. And that the parents did not accept the usufruct. Where would we be by way of legal situation under German law? What effect would that have? A. First of all, of course, disregarding the foreign exchange control factors for a moment, I would say this: First of all, it has to be clear that at the time the son tries to establish usufruct, the parents want to make this gift or to ratify the gift which you ask me to assume was void. If the parents do not want the usufruct—

Q. Let me make one thing clear. I did not ask you to assume that it was void. A. I thought you did.

2170 Q. No. If I did, I am sorry. A. I am sorry.

Q. It would come within the purview of section 139. That is what I said. I did not ask you to assume it was void.

Mr. Burling: Counsel said you would have to conclude it was void under your previous testimony.

Mr. Boland: That she would have to conclude it was void; not I. I am just asking about a set of facts when the case comes before a German court.

By the Court:

Q. That has to be your answer. You assume that would be void under 139? A. Yes. I am talking about the assumption it is void.

Q. Whether it is his assumption or yours, that is what you are assuming? A. Yes; in my answer, I am assuming it is void.

By Mr. Boland:

Q. All right. A. And you want me to assume that the son attempts to establish usufruct; that the parents do not want it—

Mr. Boland (interposing): To the property which he has held since 1931.

A. I see. And that the parents do not want—say they do not want—the usufruct?

Q. Yes. A. Well, the parents are assuming that 2171 they have made a gift to the son?

Q. Yes. A. That they have not been aware that this gift is void or might be void?

Q. That is right. A. They believe they made a gift in 1931?

Q. Yes. A. The son attempts to perform his obligation under the agreement by establishing usufruct, and the parents then declare that they do not want a usufruct?

Q. That is right. A. That would amount to the making of a gift from the parents to the son at the time the parents declared that they did not want a usufruct.

Q. Tell me this, Miss Schoch. I show you what I believe is section 184 of the German Civil Code. Would you just give us the general import of that section? A. Well, it says that subsequent ratification has retroactive effect, retroactive to the time when the transaction was made,

unless other provision has been made—unless something else has been provided for.

Q. Would you say that section 184 has any bearing on the set of circumstances you gave us hypothetically? A. I don't think so.

2172 Q. You don't think it would have retroactive validity? A. I don't think so, because I don't think that what I am talking about is the subsequent consent or subsequent ratification.

Q. Let us assume, now, a set of circumstances where, in fact, the parents knew that the gift agreement with the right in rem had not, in fact, been established, and they knew they had intended the right in rem, but at a later time, but it not having been established, they indicated that that was all right with them. That would be ratification retroactively, wouldn't it? A. No, I don't believe it would.

By the Court:

Q. Is there a difference in Germany law between what is void and voidable? A. Yes; and where you have a void transaction, you can ratify only in such a way.

Q. Can you ever ratify a void one? A. No; you can make a new transaction.

Q. When does it become void? A. It is void ab initio.

Q. Yes, I know. Is that because it has some effect in violation of some law of the realm, or because the parties have made a mistake, or what? A. Well, we are assuming

2173 here that because of the failure of an essential element—

Q. I would think that under American law that would make it voidable—I think. A. Under German law it makes it void ab initio.

Q. Absolutely? A. Absolutely.

Q. There is a difference between German law and American law in that regard, is there? I am giving my impression.

If I draw a contract right now which becomes defective because of some little detail, it does not put the stamp of absolute invalidity on it and make it completely void. It could be voided, of course, and then that would be what we call a voidable transaction. Then we may ratify that later. A. Yes, but where you have a void transaction—

Q. It is void when it is against public morals or against some law or against some exchange. Then it is absolutely void. You can't rewrite it; you have to make a new contract? A. Yes.

Q. Sometimes we say "void" when we mean "voidable." I was wondering in this case here in regard to foreign exchange. But just assume on this October 5, 1931, agreement this failure to put in those words which could readily have been put in occurred. Would that make it absolutely void, so that it could not be ratified; or would it make it void ab initio? A. Yes, it would.

2174

The Court: All right.

By Mr. Boland:

Q. And the donor would not have an opportunity to consider it as a voidable contract? A. He would have to make a new gift.

Q. He would have to make a new gift under that set of circumstances? A. Yes.

Mr. Boland: That is all.

Redirect Examination

By Mr. Burling:

Q. Mr. Boland asked you, in regard to what he was just questioning you about, to disregard foreign exchange regulations. I now ask you to assume that the father and son in 1931 intended to make a gift from the father to the son,

with the usufruct back to the father, and that because of a lawyer's mistake the instrument is defective, the father insisting on the usufruct, and therefore under section 139 of the Code the gift was void, as you have just told his Honor.

Now, will you state whether it would have been possible in 1935 for the father validly to have ratified the gift without a license from the Reich Foreign Exchange Con-
2175 trol, assuming it is a gift which has by now become a gift of foreign securities—to be exact, Swiss securities? A. A gift of foreign securities or any assignment of foreign securities required a license under German foreign exchange control.

By the Court:

Q. It would not make any difference whether it was a ratification or a new contract? A. No.

By Mr. Burling:

Q. Supposing, however, that the father and son do not know this in 1935, or are misadvised by counsel, and they go through with a purported ratification; and again, more specifically, the son tells the father that he is trying to set up a usufruct, and the father says, "I reject the usufruct. I do not want anything to do with it."

Now, would the purported ratification in 1935, which was without a license, be valid or void? A. It would be void under German law.

Q. Coming to another topic: I ask you to assume that in 1931 I am a very rich German. I have an estate of perhaps thirty-five or forty million marks, including property which I can sell to General Motors for fifteen million marks. Supposing that in all good faith I give my son the property,
which he can sell to General Motors for fifteen
2176 million marks. Supposing that thereafter an economic catastrophe happens to me, and I become pen-

niless. Do I have any legal right under German law against my son, either that he should support me or that I can recover back the gift? A. Under German law the children are under a legal obligation to support their parents.

Q. Is that support at subsistence level or at a level equal to what is referred to in German law as the social status of the parents? A. This support—of course, within the limits of the ability of the children—has to be at the accustomed standard of living of the parents—that is, in accordance with their economic and social status.

Q. So under my hypothesis, if I have given my son 15 million marks, and if I live reasonably simply, I can require him to support me in the way I have been living; is that right? A. Yes, that is right.

Q. Is there also any provision with respect to a donee? In other words, suppose, instead of giving it to my son, I give you 15 million marks, and I become penniless. Do I have any rights against you? A. There is a provision in German law concerning gifts that a donor who becomes destitute may revoke a gift he has made.

2177 Q. So, going back to Plaintiff's Exhibit 5, on the assumption I shall give you, that all that Wilhelm and Marta von Opel intended was to reserve a claim for income against the possibility that they might become penniless, they would not have had to put any provisions whatever in the instrument in order to secure that legal right? A. Yes, they were secured by these two rules of the German law.

Q. In other words, on the assumption which has been stated in this courtroom, that all Wilhelm and Marta von Opel wanted was protection, all of the words relating to usufruct are totally useless; is that correct? A. Well, unless they wanted some additional protection; I don't know. But they certainly have the protection of those—

Q. Well, I am asking you now to assume, Miss Schoch, the contrary; that if they became penniless, they could then

look to Fritz von Opel for support in their old age? A. That is right.

Q. On that assumption, all those words that have been argued about for so long are totally meaningless or totally useless? A. Yes.

Mr. Burling: That is all.

2178 *Recross Examination*

By Mr. Boland:

Q. Assuming, on the other hand, Miss Schoch, that the parent Opel was not aware of the legal right of the son to provide for him in the event of destitution, and assuming that it was his very purpose to take care of himself in his old age, or if he found himself without any more money, then, on that assumption, might the German court conclude that there was no purpose of the usufruct and, therefore, no problem involved, and that Fritz von Opel got an absolute, clear title, with no charge on the usufruct? A. Well, you are assuming that he or his son did not talk to a lawyer; and if you go to a lawyer in Germany and tell him, "I want some protection for my old age; I don't want to be penniless," any lawyer would have told you, "Well, your son"—

Q. Well, assume—

Mr. Burling: May the witness finish?

The Court: Let her finish.

By the Court:

Q. Had you finished? A. No, I had not finished the sentence. I said any lawyer would have pointed out that (a) he could revoke the gift; and (b) his son would be under a legal obligation to support him.

2179 Mr. Burling: I would like to hear the witness.

Mr. Boland: I know you would. There are many instances when we would like to hear our own.

By the Court:

Q. I do not know whether you are an expert on the conflict of laws proposition or not, but would this make any difference—this obligation to support a family—in the German law would it make any difference as to where the son would be or where the donee would be as to whether or not that could be enforced? A. Well, I think that that might make a difference.

Q. In other words, usufruct might be of some assistance if he is in a foreign nation, whereas it would be entirely unnecessary if he was in Germany? A. It would be entirely unnecessary if he was in Germany.

Q. And it might be necessary if he was in a foreign country? A. I think any country; at least on the European continent, provides for the duty of children to support their parents, so I do not see much difference what law you apply.

Mr. Boland: That was my next question, Your Honor, about property being in a foreign country. I will just let her answer go. That is all.

(The witness left the stand.)

2180 The Court: Have you a witness whose testimony will be short, Mr. Burling?

Mr. Burling: If your Honor please, we do not intend to call any further witness, unless the Swiss witness who is here testifies about the books, in which case we may call a European accountant.

The Court: Is the Swiss witness here?

Mr. Gallagher: He is, Your Honor; he is right here in the courtroom.

The Court: Will he be a witness who will take a long time?

Mr. Gallagher: I imagine he probably will take long.

The Court: You could not get through with him in 5 minutes?

Mr. Gallagher: No, indeed.

The Court: Then, I will recess until 2 o'clock.

(At 12:25 p.m. a recess was taken until 2 p.m. of the same day.)

2181 AFTERNOON SESSION

(The proceedings were resumed at 2 p.m., at the expiration of the recess.)

Mr. Burling: May I briefly address the Court? I may have made a mistake. Just before the luncheon recess I said we had no more witnesses. I meant we had no live witnesses. We do have one deposition we wish to read: However, I would suppose, subject to my friend's convenience, that we would finish this afternoon. I have every expectation of it.

Mr. Gallagher: I believe we can do that with Mr. Burling. We will only be too glad to cooperate. I have a request to make of the Court. We have two brief rebuttal witnesses who have arrived from New York and whom I did not expect to call until tomorrow morning, but they requested that I address the Court and ask that they be permitted to go on now, because they have to leave at 5 o'clock. One is on the Board of Education in New York and the other is an auditor.

The Court: That is all right.

Mr. Burling: May I inquire the names of the witnesses?

Mr. Gallagher: Yes; Mr. Clauson and Mr. Bayer.

Thereupon—

2182 ANDREW G. CLAUSON, JR., was called as a witness and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gallagher:

Q. Will you state your full name, please? A. Andrew G. Clauson, Jr.

Q. Where do you reside? A. I reside in Staten Island, New York.

Q. Where were you born, Mr. Clauson? A. Staten Island, New York.

Q. Will you state where you were educated? A. I was educated in the elementary and secondary schools in New York. I am a graduate of Packard Commercial School, and I attended New York University and have a professional degree of Certified Public Accountant from the University of the State of New York.

Q. Did you serve in the First World War? A. I did.

Q. Were you an officer? A. Well, I enlisted as a second class seaman. I was relieved of active duty in 1919 as an ensign in the pay corps.

Q. During the present war did you hold any position? A. I was a member of a local draft board in Staten

2183 Island.

Q. Do you have any children? A. I have two.

Q. Did they serve in the service of the armed forces during the war? A. They did; both in the Navy.

Q. Both boys? A. No; boy and a girl.

Mr. Burling: To speed things up, I will admit this gentleman's moral qualifications.

Mr. Gallagher: Thank you, Mr. Burling. I just wanted to bring a little of his background out.

By Mr. Gallagher:

Q. Now, have you held any public offices during your lifetime, Mr. Clauson? A. Yes.

Q. Do you presently hold a public office? A. I do.

Q. Will you state what that is? A. I am president of the Board of Education of New York City.

Q. Would you state when you were first appointed to the board? A. I was appointed January 1, 1945, by Mayor LaGuardia. I was reappointed April 1, 1947, by
2184 Mayor William O'Dwyer.

Q. When were you first elected president of the board? A. In May, 1946, re-elected in May of 1947, and elected for my third term in May of '48.

Q. Now, directing your attention to your accounting experience, when did you commence the work of accounting? In what year? A. Well, I went with Haskins and Sells I think in the winter of 1919, right after leaving the armed services.

Q. And how long did you stay with Haskins and Sells? A. I stayed with them until May of 1924.

Q. Then with whom were you associated? A. Then I became comptroller of a banking corporation in New York City and stayed there until the end of 1927. The year 1928 I was comptroller of the United Wallpaper Factories. On January 1, 1929, Mr. Bayer and I formed the firm of Bayer and Clauson, and we are still partners in it.

Q. Do you know Mr. Fritz von Opel? A. I do.

Q. When did you first meet Mr. Fritz von Opel? A. I believe it was in the fall, possibly October or November, of 1931.

2185 Q. During the succeeding years has your firm represented Mr. von Opel or the Uebersee Finanz-Korporation or any interests which that corporation has? A. Our firm has been accountants and auditors for the American owned and controlled company of Mr. von Opel since that time and up until 1942, I believe it was.

Q. I might ask, do you have any honorary degrees, Mr. Clauson? A. I have an honorary degree of doctor of laws.

Q. Now, in connection with your representation of these companies in which Uebersee or Mr. von Opel has an interest, can you state whether or not there was any breakdown between you and Mr. Bayer or your men with respect to which companies you worked on? A. Yes. Mr. Bayer and I had general control of our practice—always have—we still have—but for the division of work, I looked after the Spur Distributing Company at Nashville and the Harvard Brewing Company in Lowell, Massachusetts, and Mr. Bayer usually looked after the companies down in Shreveport, Louisiana, plus the fact that Mr. Bayer usually looked after the tax work.

Q. Have you served as a member of the board of directors for Spur Distributing? A. I did for a few years.

Q. Were you on the budget committee for the
2186 Harvard Brewery? A. I was.

Q. Do you know a Mr. Theodore Hoffacker, or did you know him? A. I do—I did know him.

Q. Do you know a Dr. Hans Frankenberg? A. Yes, I do.

Q. I will ask you, Mr. Clauson, did Mr. Hoffacker ever tell you that he represented Wilhelm von Opel? A. He never did.

Q. Did Dr. Frankenberg ever tell you that Wilhelm von Opel owned Uebersee and these other companies indirectly? A. No.

Q. Did Dr. Frankenberg ever tell you that he was Wilhelm von Opel's agent? A. No.

Q. Did Fritz von Opel ever tell you that these properties on which you were working were the properties of his father? A. No.

Q. Will you state to the Court who you have always believed was the owner of the Uebersee Finanz-Korporation and the shares of Spur, Harvard, and the other

corporations on which you did auditing work? A.
2187 I have always believed that they belonged to Mr. Fritz von Opel and/or Uebersee Finanz-Korporation.

Q. If any of those people whom I have mentioned or if anybody else had mentioned to you the fact that Wilhelm von Opel owned these properties or that Dr. Hans Frankenberg was Wilhelm von Opel's agent, do you believe you would have remembered that? A. Definitely.

Q. And so it is your impression, if I understand it, that Fritz von Opel and/or Uebersee always owned the properties in question? A. That is correct.

Mr. Gallagher: That is all.

Cross Examination

By Mr. Burling:

Q. You are an accountant, are you not, sir? A. I am.

Q. Yet you never laid eyes on any book of account of Uebersee Finanz-Korporation; is that right? A. That is correct.

Q. Will you state when and exactly what was said to you and by whom as to the ownership of Uebersee Finanz-Korporation? A. Well, that is a little hard to answer just that way, isn't it?

2188 Q. Yes, it is. A. My first connection, I suppose, was in the fall of '31, when Theodore Hoffacker, for whom we had done some work, introduced me to Mr. von Opel.

Q. And what was said to you by Mr. Hoffacker or von Opel in 1931 as to who owned the shares of Uebersee Finanz? A. At that time—I don't believe anything was said about Uebersee. At that time it was a question—

Q. Let us come to the year 1932, then. A. Well—

Mr. Gallagher: Just a moment, Mr. Burling. I think the witness should be permitted to answer. Now, you were granted that concession.

Do you have anything further to state in response to that question?

The Court: Do you have anything to say in answer to that other question?

The Witness: No.

By Mr. Burling:

Q. We come to the year 1932. State just exactly what was said to you, in so far as you remember, by whom, and where it took place, about who owned the shares of Uebersee Finanz-Korporation in the year 1932. A. The information came to me from Mr. Hoffacker that
2189 Mr. Fritz von Opel had acquired controlling interest in the Spur Distributing Company and that he, Hoffacker, would like us to go to Nashville and make an audit of the books of the Spur Distributing Company.

Q. Hoffacker told you Fritz von Opel owned the shares; is that right? A. Said that Fritz von Opel had acquired the controlling stock of the Spur Distributing Company.

Q. As an accountant, sir, you will admit that I might acquire the controlling stock of the Statler Hotel Company for a client? A. That is right.

Q. And yet not own it myself, will you not? A. That is true.

Q. Was anything told you about who owned the beneficial interest, the real interest, in Uebersee? A. Fritz von Opel.

Q. Who said that? A. Mr. Hoffacker.

Q. When? A. Well, it might have been any time from October thirty-one on.

Q. Will you fix the year, please? A. Pardon me?

Q. Will you fix the year? A. It is hard for me
2190 to fix the year, because I first met Mr. von Opel, or, at least, we were called into the situation, in the

fall of 1931, at which time Hoffacker undoubtedly said that Mr. Fritz von Opel had acquired interest in various companies, including Spur Distributing Company.

Q. And you understood, of course, that he had the beneficial interest in it himself? A. Naturally, that is correct.

Q. And he said that again in 1933 and 1934 and up to June 5, 1935, didn't he? A. He said it right along; I don't know why June 5, 1935.

Q. I will come to that. A. All right.

Q. Now, are you aware that Fritz von Opel made an affidavit and swore on his oath that he had nothing but the bare legal title to the shares of Uebersee— A. No, I do not.

Q. May I finish my question? A. Yes, indeed. Sorry.

Q. Are you aware that Fritz von Opel—By the way, he is the man sitting at this table? A With the paper in front of him, that is correct.

2191 Q. Are you aware that he swore on his oath that he did not have the beneficial interest, but that the beneficial interest was in Wilhelm von Opel and that he swore that oath on June 7, 1935? A. I don't know that.

Q. Are you aware that that affidavit was filed in the United States District Court for the Southern District of New York? A. I am not aware of it.

Q. Are you aware that the record containing that affidavit went to the United States Circuit Court of Appeals for the Second Circuit and that the case was argued by John W. Davis? A. I am not aware of it.

Q. You have no knowledge of that? A. Not of that affidavit, no, sir.

Q. You are aware that a lawsuit was brought, are you not, by Uebersee to obtain permission to export $1,250,000 in gold? A. That is true. I knew that there was a suit pertaining to gold, but as to the details, I know nothing about it.

Q. I am not speaking of details, sir. Didn't you know that the contention was that the gold—

Mr. Gallagher: Just a minute. I submit that is
2192 a detail.

Mr. Burling: I submit that the main basis of the suit is not a detail.

The Court: If he knows about it, it is proper cross examination.

By Mr. Burling:

Q. Did you not know that the interest of Uebersee—that is, here and there—Uebersee—that the basis of the gold was beneficially not owned by Fritz von Opel but was owned by Wilhelm von Opel, his father? A. I did not know it.

Q. Although you were the accountant for the firm, you had no knowledge— A. We weren't the—

Q. Let me finish. A. I am sorry.

Q. Although you were the accountant for the firm or for the company, you did not know what the basis of their gold case claim was; is that correct?

Mr. Gallagher: Just a moinent, Your Honor.

The Witness: Accountants to what company?

Mr. Gallagher: He did not act for Uebersee.

Mr. Burling: I agree.

The Witness: We were not the accountants, Your Honor, of Uebersee.

2193 By Mr. Burling:

Q. I apologize. You were the accountant for, so far as you know, all of the American investments of Uebersee, were not? A. Well, as far as I know, yes.

Q. Were you also the personal accountant in America

for Fritz von Opel? A. Only to the extent that we helped prepare tax returns for him in America.

Q. And do you or do you not—

Mr. Gallagher: Just a moment, Mr. Burling. Mr. Boland has brought to my attention something that I think should be clarified. I believe, on the statements that you are now making to the witness, that the witness should be advised that during the years preceding June 7, 1935, Mr. von Opel always claimed to be the owner, and that it was at that time that he claimed that a usufruct was set up.

Mr. Burling: That is purely a matter of argument as to what is in the record, if Your Honor please.

By Mr. Burling:

Q. Will you state now whether in June, 1935, you had any familiarity with the fact that Fritz von Opel or Wilhelm von Opel, through Uebersee, was endeavoring to export from the United States one million and a
2194 quarter dollars in gold? A. How much more clearly can I state it than to say that I knew that there was a suit pending re gold? We had nothing to do with it. We are not lawyers. Therefore, we really had nothing to do with it. I don't know what affidavits were filed and what was not filed.

Q. And the basis of that suit was never discussed with you? A. No, it was not.

Q. And you have no idea, have you, at all whether in the United States District Court for the Southern District of New York the position was taken that the beneficial owner of the gold was Wilhelm and that Fritz had bare legal title? A. I haven't the slightest idea of that.

Q. And you have no idea of what John W. Davis told the Second Circuit? A. I have not the slightest idea.

Q. And that did not interest you at the time? A. No.

Mr. Burling: That is all.

By the Court:

Q. Did you have occasion at any time to bring up the question of ownership of the shares of stock or was that just information that came to you casually? A. 2195 No; it was usually information that came to us casually.

Q. There was no particular event when you asked him questions about it or no point was made as to who was the owner? I mean for accounting purposes. A. No. I just, from the very beginning—it was our feeling that Fritz von Opel and/or Uebersee owned the stock, and I don't suppose beyond that we thought too much about it, frankly.

The Court: Thank you.

The Witness: Thank you.

Mr. Gallagher: Thank you, Mr. Clauson.

(The witness left the stand.)

Thereupon—

WALTER VAN DYKE BAYER was called as a witness and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gallagher:

Q. Will you state your full name, please? A. My name is Walter Van Dyke Bayer.

Q. And where do you reside, Mr. Bayer? A. I reside at Garden City, New York.

Q. Will you state where you were born? A. I was born in Brooklyn, New York.

2196 Q. And where were you educated? A. I went to a public school in Brooklyn, P.S. 44, Erasmus Hall High School in Brooklyn. I then went to Amherst College in Amherst, Massachusetts.

Q. What degree did you get? A. Graduated in 1919 with a degree of B.A. After college, while working, I went to school at nights at New York University, in a graduate school of business administration, and received a degree in 1924 of M.B.A.

Q. Are you now a Certified Public Accountant? A. I am a Certified Public Accountant since 1926.

Q. Have you ever served on any committees of the New York State Accounting Association? A. In the past —I am a member of the New York State Society of Certified Public Accountants, American Institute of Accountants; and in the past I have served on some technical committees of the New York State Society of Certified Public Accountants, the Federal Taxation Committee, and their Committee on Contingent Liabilities and Commitments.

Q. Now, when did you commence accounting? A. Well, after I graduated from college I was employed by four or five private companies as bookkeeper and accountant. In August of 1922 I went with Haskins and Sells on their staff as a public accountant.

2197 Q. And how long did you remain with Haskins and Sells? A. I was with Haskins and Sells until the end of December, 1927.

Q. And thereafter what? A. Then I went with the J. Henry Schroder Banking Corporation as auditor, and I was with them from the latter part of December, 1927, to the end of 1928.

Q. And when did you become associated with Mr. Clauson? A. Well, I had known Mr. Clauson from about 1922, when I joined Haskins and Sells. He was also with Haskins and Sells, and I met him at that time and knew him from then on, and he was probably instrumental in

my taking the position with the J. Henry Schroder Banking Corporation.

Q. Had you formed an association with him in 1929? A. January 1st, 1929, we started a co-partnership as Certified Public Accountants.

Q. You have been together since that time? A. Our firm has continued in existence since that date.

Q. Do you know Mr. Fritz von Opel? A. Yes, I do.

Q. Do you recollect when you first met Mr. Fritz
2198 von Opel? A. It was the latter part of October, 1931.

Q. And to make this a little briefer, you heard Mr. Clauson's testimony? A. Well, I wasn't listening carefully to all of it.

Q. Will you state, then, the nature of the work you did for Mr. Fritz von Opel or the Uebersee Korporation? A. Well, in October of 1931 we were introduced to Mr. von Opel by Mr. Hoffacker, and arrangements were made and contracts were executed whereby, in connection with the sale of shares of General Motors stock, we were to act to countersign instructions in connection with the sale or purchase and delivery of those shares through the City Bank-Farmers Trust Company.

Q. And down through the years did you do auditing work for various companies in which he and/or Uebersee owned shares? A. I might just mention, in that connection, that we were instructed by Mr. von Opel that we were to prepare his 1931 tax returns—our firm.

Q. And you did that also? A. And we subsequently prepared his 1931 tax return, which was filed in June of 1942—

Q. 1932? A. 1932; pardon me.

2199 Q. Thereafter did your firm audit the books, et cetera, of the various companies in which Uebersee and/or Mr. von Opel owned shares? A. As I recollect, Mr. von Opel, out of the proceeds of this General Motors stock—the contract with Hoffacker on the sale of it was

cancelled early in 1932. Mr. von Opel made certain purchases of securities. In June of 1942—

Q. 1932— A. Of 1932—it is a long ways back—those securities owned by Mr. von Opel were transferred to Uebersee Finanz-Korporation, and from then on Uebersee Finanz-Korporation was the owner.

Q. And thereafter did you then audit the books and records of Spur, Harvard— A. And during this period from '32 on Uebersee Finanz-Korporation acquired an investment in Spur Distributing Company, Harvard Brewing Company, and some companies down in Shreveport known as Oil Production, Inc., and Oil Refineries, Inc., and we were the auditors—our firm were the auditors of those companies.

Q. Now, before I ask you specifically about the companies with respect to which you audited the books, I will ask you this question: In the course of the many years that you worked for Uebersee and in the course of
2200 those years during which you have known Mr. von Opel, have you ever heard him state that these Uebersee shares or the shares in the various corporations on which you were working were owned by his father, Wilhelm von Opel? A. No, never.

Q. Do you know Dr. Hans Frankenberg? A. I have met him. I know him nowhere near as well as I do Mr. von Opel.

Q. Have you ever heard him make a statement that Wilhelm von Opel owned the Uebersee shares or the shares of Harvard or any of these other corporations? A. No, sir.

Q. Do you know Mr. Theodore Hoffacker? A. I knew him in days of old.

Q. Did you ever hear him state that Wilhelm von Opel owned these shares of Uebersee or the shares in these various corporations which we are referring to? A. No, I never did.

Q. Did you ever hear him say that he was the agent of Wilhelm von Opel? A. No, I never did.

Q. Do you know a man by the name of Mr. B. F. Crittenden? A. I think it is B. P. Crittenden.

Q. B. P. Crittenden. I am sorry. Mr. Bayer, Mr. Crittenden has been a witness in this case for the defense, and on several occasions—specifically, to start off with, page 1921 of the record and page 1923 of the record—Mr. Crittenden, in talking about your reference to von Opel and Frankenberg, used this type language. In speaking about Bayer, he says, on page 1921:

2201

"He"—meaning, you—"always referred to them as the Germans."

Now, I will ask you if you ever referred to these people as the Germans? A. I am quite positive that I never used any such term. It is quite contrary to my manner of talking and my mode of speaking.

Q. Now, Mr. Bayer, I want to read from page 1922 of the record, and I might give you a little background without reading it all. Mr. Crittenden had stated that in 1937 they wanted to form a consolidation of interests, and he named a number of companies that were to be consolidated. This is 1937. A. Who wanted to form a consolidation?

Q. Crittenden said that he and Uebersee wanted to form a consolidation, and in naming the companies in 1937 that were to be consolidated, he named the Trio Refining Corporation, the Centera Pipelines, the De Soto Crude Oil, the Rhodesia Oil Refining Corporation, and they were all to be combined with Oil Refineries and Oil Production into a company known as Hurricane. A. Yes.

2202

Q. Now, I will ask you, When was Hurricane formed? A. Hurricane Petroleum Corporation; I believe, was formed around the middle of 1935.

Q. So, it already was in existence two years before 1937? A. That is my recollection. Hurricane Petroleum

Corporation became the result of a merger between Oil Production, Inc., and Oil Refineries, Inc., which had previously existed as separate companies.

Q. And did they absorb, prior to 1937, the Trio Refining Corporation and several others? A. I believe that Trio Refining Corporate De Soto Crude Oil Purchasing Corporation, which had been acquired by Grogan and Crittenden, were purchased by Hurricane Petroleum Corporation during 1935, and that subsequent to that, within maybe eight or nine months, possibly, or less, Trio Refining Corporation was dissolved and became part of Hurricane Petroleum Corporation, and De Soto, which was 100 per cent owned by Hurricane, remained as a subsidiary company, and that took place in 1935.

2203 Q. 1935? A. Or earlier.

Q. So when you are talking in 1937 about any merger, you were merely talking about Rhodesia and Petroleum joining in— A. We would be talking about Hurricane Petroleum Company and Rhodesia.

Q. All right. I want to read from the bottom of page 1922 and page 1923, leading up to one sentence on which I will then ask you a question. The question to Mr. Crittenden was:

"Now, you said that you agreed with Mr. Bayer to evaluate your interest and he would evaluate the other interest? Was anything done in that connection?

"Answer: Yes, it was done.

"Question: And what happened?

Now, you can exclude the representation about the words "the Germans" in your answer, because you have already answered that you never used that expression.

Here was the answer Mr. Crittenden gave, and I now want you to state whether that is correct. He stated:

"Bayer notified us—notified me, or he notified Grogan and me, that the Germans would like to have us come to Switzerland, complete the transaction, and we went."

2204 I ask you, Is that statement correct? A. I don't think it is fully correct, no.

Q. Will you state your understanding? A. My recollection is that Rhodesia, which had been formed by Grogan and Crittenden, was in existence from 1935 on, and we were requested by Grogan and Crittenden to make an audit of Rhodesia as of May 31, 1937, and apparently there was some thought on their part that it would be desirable to have Rhodesia become connected in the Hurricane picture; and I think that there may have been some discussions with me on that subject, in connection with the audit; and the latter part of June, 1937, just recently referring to my diary, Grogan, Crittenden, and McGowan, who was the lawyer for the Shreveport properties, came to New York and we had some discussions about Rhodesia; and it is possible that at their request I sent a cable, or there was sent a cable, abroad to von Opel whether he would be interested in such a consolidation.

Q. So on the question of which was first, the cart or the horse, it was Mr. Crittenden in this instance and Mr. Grogan who were anxious to put forth to Mr. von Opel this question of consolidation, rather than, as Mr. Crittenden said, "Bayer notified us that the Germans would

2205 like us to come to Switzerland and complete the transaction"; is that correct? A. That would be my recollection. In other words, I think it is quite possible that, as a result of their request, that I did pass on some information to them as an intermediary.

Q. But the initial start of it came from this side? A. There may have been discussions prior between Mr. Crittenden and Mr. von Opel, because there was a complication on the Rhodesia Company. In other words, I think that there was an exception taken to the fact that they, while acting as managers of the Shreveport properties, had gone into sort of a competitive business.

Mr. Hoffacker had acquired 300 shares of Rhodesia

stock, and there was a lot of exception taken to that situation.

So that there was a clarification of interests and issues that was involved and may have continued for a period prior to this audit that we eventually made in May, 1937, and the eventual discussions, but I think it was, as far as I recollect—Grogan and Crittenden were more interested in having the properties merged than Mr. von Opel was.

Q. Now, as a result I know you went to Europe. 2206 I am going to ask you at this moment, Who paid the expenses of your trip? Did Uebersee or Mr. Fritz von Opel pay those expenses? A. I kept a fairly careful record of my expenses. My wife was accompanying me on the trip. Since Mrs. Crittenden was going along and her expenses were paid for by myself and my wife, and certain expenses that were considered personal travel expenses were paid by us—

Mr. Burling: May I ask for an elucidation of whom "her expenses" refers to?

Mr. Gallagher: Mrs. Bayer.

The Witness: My wife's.

Mr. Burling: Your wife's. Thank you, sir.

The Witness: My wife, who accompanied me on that trip. The remainder of the expenses, plus a charge for my time while abroad, after discussion with Mr. Crittenden, were charged one-half to Hurricane Petroleum Corporation and one-half to Rhodesia Oil and Refining Company, and were paid for by those companies.

By Mr. Gallagher:

Q. Now, Mr. Crittenden stated, at page 1923 of the record, in response to the question, How long did he stay in Zurich?

"I guess the better part of three weeks."

2207 Now, do you have any records or notes which would reflect how long you were in Zurich? A. Yes. I have made a little check back on that from the expense records that I kept. We arrived in Cherbourg on the morning of Thursday, July 29. Friday morning, July 30, we took a train from Paris to Zurich and arrived in Zurich late that afternoon or early evening.

We stayed there at Zurich that Friday night—

Q. I might ask you, during this traveling that you were relating were you with Mr. and Mrs. Crittenden? A. There was a party of five that were enroute together during the time we arrived in Cherbourg until the time that we eventually arrived in London.

Q. Was Mr. Crittenden a part of that party? A. Mr. and Mrs. Crittenden, Mr. and Mrs. Bayer, and a Mrs. Lyons.

Q. All right. Go ahead. You are arriving in Zurich. A. We arrived, as I said, in Zurich late in the afternoon or early evening of July 30, on Friday.

We stayed in Zurich on Saturday, July 31, to Friday morning early, August 6th. So that there were a Saturday, a Sunday, and four week days, Monday, Tuesday, Wednesday, and Thursday.

2208 Friday morning, August 6, the five of us, with a chauffeur, started on an automobile trip through Switzerland and the northern part of Italy, and we stopped off at St. Moritz. This trip—the itinerary of that particular trip, I believe, was suggested by Mr. von Opel as an interesting trip to take.

We stopped at St. Moritz, Locarno—

Q. You do not need all that; just generally.

Mr. Burling: Is he coming back to Zurich?

The Court: I did not think he needed all the details.

The Witness: We arrived back in Zurich late Tuesday afternoon or early evening of Tuesday, August 10. In

other words, we were away approximately five days. We then stayed in Zurich the following day, Wednesday, August 11, and part of Thursday, August 12, and after lunch we took a train from Zurich with the ultimate destination to be The Hague in Holland.

By Mr. Gallagher:

Q. But you were in Zurich altogether, then a total of about six and a half days; is that correct? A. Well, it would be seven and a half days, including Saturday and Sunday.

Q. Now, while you were in Zurich did you participate in conferences with Fritz von Opel, Mr. Crittenden,
2209 and Dr. Frankenberg? A. I participated in discussions and conferences and negotiations in connection with this proposed merging of interests.

Q. Where did these conferences take place, if you recollect? A. Well, the conferences, as I recollect, all took place in a conference room of the Adler Bank.

Q. I might ask you at this time this. Mr. Crittenden stated, on page 1924 of the record:

"Dr. Frankenberg did most of the questioning."

Now, was this discussion run in a manner in which Frankenberg was, as Crittenden said, doing most of the questioning, or would you describe the atmosphere? A. Well, I would say it was not a questioning type of discussion. It was a question of arriving at a possible meeting of the minds. There were undoubtedly questions asked back and forth, and possibly Dr. Frankenberg may have asked more questions of Mr. von Opel, since he was not as familiar with the Shreveport properties.

Q. By the way, did he speak very good English at that time? A. Yes. He was definitely understandable, without any difficulty.

2210 Q. Now, Mr. Crittenden stated again, reading from the record at page 1928:

"Question:"—And this was to Mr. Crittenden by Mr. Burling—"And did you have any other conversation with Frankenberg at this time?

"Answer: Yes, I did. I asked him very frankly what his relation was to Fritz von Opel and the business; and his reply was very simple and direct.

"He said that he represented Fritz von Opel's father on many occasions in many places for many years and was assisting his father."

Now, I will ask you, Did you hear Dr. Frankenberg make any such statement? A. No, I did not.

Q. Now, after you left Zurich—

Mr. Burling: Just a moment. I object to the question that has just been asked on the ground that the record makes no showing that Crittenden said he said this in the presence of this witness. The testimony is that he had a discussion with Frankenberg about Frankenberg's Degas paintings, and then he said this. There is no showing that this witness was present.

Mr. Gallagher: I asked this witness if he was at the conferences.

2211 The Court: I will let him answer. Whether it throws any light on it, you can argue. I do not remember him saying that Mr. Bayer was present.

Mr. Gallagher: He stated it earlier:

"Usually there was present Fritz von Opel, Walter Bayer, Hans Frankenberg, and myself."

The Court: On the occasion of this discussion?

Mr. Gallagher: I will ask Mr. Bayer that to clarify that.

By Mr. Gallagher:

Q. Were you present at all the conferences that were held during these few times in Zurich in the bank, and to the best of your recollection? A. To the best of my recollection, I was present at all conferences that related—

Mr. Burling: If Your Honor please, I do not know how this witness could testify that Frankenberg could not and did not have a conversation when he was not there.

Mr. Gallagher: He could have gone down to the men's room and they could have had it. I admit that. But I want to point out that he was at all the conferences and did not hear it.

By the Court:

Q. Were you present at any time when a question was asked by Mr. Crittenden of Mr. Frankenberg as to
2212 who the owner of the property was? I mean what the relation of Mr. Frankenberg was to the enterprise. A. I have no recollection of it, no.

Q. Do you have any definite recollection of any discussion while you were over there with regard to the ownership and control of these corporations? A. I don't recollect that that was ever brought into the discussion, that there was any feature of that that was involved in any discussion.

The Court: All right.

By Mr. Gallagher:

Q. Now, after you left Zurich—to help expedite this, I will lead him just a little bit—you went to Mainz, Germany, and took a boat down the river? A. After we left Zurich on the train, we stopped the first night at Mainz, Germany.

Q. Did Mr. Crittenden suggest or did Mr. von Opel suggest to you gentlemen or Dr. Frankenberg that you see Wilhelm von Opel while you were in Germany? A. No.

Q. Would you believe it true if I were to tell you that Wiesbaden, where Wilhelm von Opel resides, was about 15 minutes from the town of Mainz, which you referred to

as the place you stopped at the first night? A.
2213 Well, I would have no reason to believe or disbelieve.

Q. But there was no discussion of going and seeing Wilhelm von Opel?

Mr. Burling: That is, you mean 15 minutes by air?

The Court: Well, that is not testimony. He does not know anything about it.

By Mr. Gallagher:

Q. Now, you were traveling in intimate contact with Mr. and Mrs. Crittenden all during your trip in Europe; is that correct? A. Yes, and until we arrived in London.

Q. On any occasion or at any time there during your close association in Europe or any time subsequently in the States did Crittenden ever tell you that Fritz von Opel was not the real owner of these companies; that it was Wilhelm von Opel; and that Frankenberg was Wilhelm's agent? A. Did Mr. Crittenden ever say that to me?

Q. Yes. A. No.

Q. Never in all this travel around Europe? He never mentioned it once to you? A. No, sir.

Q. You have previously stated that no one ever made that statement to you; is that correct? A. That is
2214 correct.

Q. I might ask you this, Mr. Bayer. If you had been advised by anybody at any time that Wilhelm von Opel really owned these properties and that it was not Fritz, would you have remembered that statement? A. I am quite sure that I would, because in connection with the preparation of the tax returns for Uebersee and von Opel—I don't think we would have prepared the returns if we felt that there was a question of ownership.

Q. All right. Thank you.

By the Court:

Q. The ownership would not have any relation to the corporation's return, would it? A. No, I don't—well, it would have, possibly, in some of these years that personal holding company taxes were involved, these years 1936 through 1941, where the income was taxed to Mr. von Opel on a consent dividend basis.

Q. His personal returns would have some relation. Did you handle his returns through that period? A. We handled his returns through all of the period from 1931 on. It is possible that in some of these years there was not any taxable income, and I would not be sure whether—

The Court: All right. I do not want to get off 2215 on that.

The Witness: But I think returns were filed for all of the years for Mr. von Opel.

By Mr. Gallagher:

Q. Did you ever see Wilhelm von Opel, by the way? A. No.

Q. Did you ever get any orders or directions or letters from him? A. We never had any correspondence with him at all.

Q. Never sent him any financial statements at all? A. No; never knew of him or had any correspondence with him.

Q. Now, turning to page 1957, Mr. Burling was talking to Mr. Crittenden about a Mr. Ulrich. Did you know a man by the name of Mr. Ulrich? A. Yes, I knew him, and I would see him once in a great while.

Q. Was he associated for a time with the Hurricane Oil Company? A. He was connected with the Shreveport companies, Hurricane, and so on.

Q. By the way, Hurricane finally went bankrupt, didn't it? A. Went bankrupt, I believe, in June of 1940.

Q. Mr. Crittenden, in testifying, stated, at page 2216 1957:

"Question: After Mr. Ulrich was put in charge of the Hurricane Corporation, did the company then get into difficulties?

"Answer: Immediately.

"Question: What year was that?

"Answer: 1938.

"Question: Can you give us the approximate month?

"Answer: Oh, let us say in the middle of the year, Mr. Ingoldsby.

"Question: About the middle of 1938. Do you feel that the reason that the company got into difficulty in the middle of 1938 was a lack of capital?

"Answer: I do.

"Question: You do feel that was it?

"Answer: That was one reason, and it was—the principal reason was Mr. Ulrich's behavior and utterances."

Now, as a result of your duties with the Hurricane Oil Company, can you state the reason why the Hurricane Oil Company did get into difficulty? A. My opinion was that they had greatly over-expanded for their working capital and that when economic conditions went 2217 against them that they were not able to weather the storm.

Q. When did this overexpansion become evident?

The Court: I think we are getting too remote. If I am going to have to decide that issue, I am going to have a problem.

By Mr. Gallagher:

Q. Just one further question. There was some further testimony in this case, Mr. Bayer, about a meeting in

Montreal in 1936, at which Dr. Frankenberg and Mr. von Opel, Houghland, and Crittenden all appeared. There was some testimony you were at that same meeting. Is that correct? A. I was up in Montreal for about three days plus a Sunday in June of 1936, that is correct.

Q. Now, there was some testimony from Mr. Crittenden to the effect that the impression that was given at that meeting was that Wilhelm von Opel owned this property and that Hoffacker and all were Wilhelm's agent. Was that your impression from that meeting? A. No, I never got that impression from any meeting.

Mr. Gallagher: All right. That is all.

Cross Examination

By Mr. Burling:

Q. I have just a few questions. You see Fritz von
2218 Opel here, do you not (indicating)? A. Yes.

Q. And you know Hans Frankenberg also? A. That is correct.

Q. And I think you testified that you knew the two men equally well? A. No, I did not. I said I knew Mr. von Opel much better than Dr. Frankenberg.

Q. I did not mean to put words in your mouth; I misunderstood you.

You filed the tax returns both for Fritz von Opel personally and for Uebersee Finanz-Korporation up until and including the year 1942; is that right? A. Well, my firm did, and I probably supervised most of the—

Q. I do not mean you physically did the typing. You were in charge of the filing of the returns; is that correct? A. That is correct.

Q. Will you state when the personal holding company tax returns for the Uebersee Finanz-Korporation were filed for the years 1936, 1937, 1938, 1939, 1940, and 1941? A. When were they filed?

Q. Yes, please. A. Personal holding company taxes?

Q. Yes, please. A. They were filed in, I think,
2219 in June of 1942—June or July of 1942.

Q. And the failure or omission—I do not mean that there was anything wrong about it—, A. Yes.

Q. The non-filing of the personal holding company taxes for the years 1936 to 1941, inclusive, until 1942, was on the basis of a statement made to you either by Fritz von Opel or by Dr. Frankenberg that Uebersee had ceased to be a personal holding company; is that correct? A. That is correct. That statement, I believe, was made in Montreal in June of 1936.

Q. Now, can you recall in what words either Frankenberg or von Opel said to you that Uebersee was no longer a personal holding company? A. Well, as I recollect, I was informed that Mr. von Opel had sold his shares of stock to the extent, anyway, that he did not own 50 per cent of the stock and that his interest had been converted —in Uebersee—had been converted into a substantial indebtedness of some character by Uebersee to Fritz von Opel.

Q. Now, Mr. Bayer, I want to ask you this question. It is a little bit technical. I ask you to listen to me carefully.

2220 Were you told that Fritz von Opel had gone through the following transaction: that he, through a Liechtensteinean legal entity, had contracted with a Swiss bank whereby a Swiss bank would nominally place the shares of Uebersee with eleven of its clients under a contract that the shares were to be returned to Mr. von Opel through this Liechtensteinean entity at the same price that had first been paid, and that, in addition, there was also a contract that the nominal purchasers were to give proxies so that the shares could be voted as Mr. von Opel directed, and also that, irrespective of the true earnings of Uebersee, these nominal holders were to receive 6 per cent as a fee?

Mr. Gallagher: If Your Honor please—

Mr. Burling: I just want to know if he was told this.

Mr. Gallagher: It seems to me we are getting very far afield. This is a rebuttal witness. There has been nothing asked him on direct about these shares.

The Court: The only way that it would be admissible would be in connection with that conversation you asked him about in Montreal. Is that the same conversation he is talking about?

Mr. Gallagher: All I asked him about in Montreal was the impression given—

Mr. Burling: One of the assertions is—

2221 Mr. Gallagher: This is not our case in chief, though, Mr. Burling.

The Court: Let me get it clear so I can rule on it. What did you ask him?

Mr. Gallagher: All I asked him about Montreal was the impression given. I said there had been some statements through Mr. Crittenden that the general impression was that Wilhelm von Opel really owned all this property and that Frankenberg was the agent.

I said, "Was that your impression?"

He said, "No; I never had any such impression."

That was all that was asked about the Montreal meeting.

Mr. Burling: This cuts two ways. If the answer is yes, that goes to impeach the credibility of the witness. He participated in the scheme to defraud the United States, which is admissible on his credibility. I do not think the answer would be yes. I do not believe this witness knew that.

If the answer is no, I just do not want to insult the witness, but either way the answer would be admissible, because the other way the auditor was deceived as to the true ownership, which would go to the part of the testimony which Mr. Gallagher brought out.

Mr. Gallagher: I merely brought out the testi-
2222 mony as to the ownership of von Opel.

Mr. Burling: If this witness was lied to in Montreal as to the state of the ownership of Uebersee, it is highly material as to what impression he got.

The Court: That is the only ground that I think it may be admissible on. Let us find out if he heard that.

Mr. Burling: Do you recall my question or shall I restate it?

A. I might just simplify it by saying that I was not given any details as to what had happened.

By Mr. Burling:

Q. You were just told that a sale to Swiss stockholders had taken place and that it was Frankenberg's opinion that the company was no longer a personal holding company; is that right?

Mr. Gallagher: Just a moment, now. He has not stated anything about its being Frankenberg's opinion.

Mr. Burling: I will come to that. I am asking him, if Your Honor please—

Mr. Gallagher: Ask him whose opinion it was.

Mr. Burling: I just did, if Your Honor please. The question was, Weren't you just told by Frankenberg—

The Court: We have a very unusual situation here. We generally do not ask witnesses what impression they
2223 have. When you ask him about impressions, I guess that gives him a little latitude.

Mr. Gallagher: This is a rebuttal witness to correct an impression that Mr. Burling got from the witness.

The Court: Impression testimony is not really evidence. I have permitted testimony from both sides on that. I have not stopped you. Having testified to an impression, I will

give him a little latitude on that. Let us ask him one or two questions on that.

Mr. Burling: Yes, sir.

The Witness: Well, I don't know that it was Frankenberg that was the one that told me. You started off—we had a lot of intermediate discussion there. I think that the information came from possibly both Mr. von Opel and Dr. Frankenberg.

By Mr. Burling:

Q. Do you recognize the handwriting which appears at the bottom of page 3 of Defendant's Exhibit 83 (handing a document to the witness)? A. Yes.

Q. Whose is it? A. That is my signature.

Q. Now, will you examine the third paragraph of the first page of this document, and I call your attention to the following words:

2224 "Since we were informed by you"—this is a letter addressed to Frankenberg in June—"that Uebersee is no longer a personal holding company, we will eliminate that tax from our consideration."

A. That is correct.

Q. Does that refresh your recollection— A. That refreshes my memory that we did receive a letter from Dr. Frankenberg, but that was subsequent to Montreal.

Q. I don't care whether it was in Montreal or where it was. Were you informed by Dr. Frankenberg that Uebersee was no longer a personal holding company? A. We were informed by Dr. Frankenberg, but when we were informed that way we were not informed—that was merely a statement from him. There was nothing about stock ownership in that letter, or indebtedness.

Q. Do you now remember whether Frankenberg told you that Uebersee was not a holding company—a personal holding company? A. In writing, yes.

Q. Will you state whether that was the basis of your omission to file personal holding company taxes? A. That would be correct.

Q. Now, were you told by Frankenberg of the nature of the purported transfer to Swiss nationals that I
2225 have previously described? A. That I could not recall whether it would have been from Dr. Frankenberg or Fritz von Opel.

Q. Were you ever told of the situation which I have just described? A. All the details?

Q. Yes. A. No.

Q. You had no idea until this minute, did you, that the transfer was a transfer with warrants back to the owner, with an agreement to pay a fixed fee, with an agreement that the purported stockholders would vote the stock as they were directed, and that the shares were held—

Mr. Gallagher: Just a moment, Your Honor. There has been no evidence put into the record about a purported transaction. The testimony has been quite to the contrary.

The Court: I will permit the testimony.

Did you hear that?

The Witness: Of course, when these tax returns were filed for these years involved, I then knew that there was an element of options involved, but that is about all. I did not know any of the details such as are being explained now—voting, and so forth.

By Mr. Burling:

2226 Q. You were the auditor, were you, of Oil Production and Oil Refineries, Inc., in the year 1937, or was it Hurricane? A. Hurricane Petroleum Corporation.

Q. Now, in your capacity as auditor, do you know who paid Crittenden's passage to Europe in the summer of 1937? A. Well, I would not recall for sure. I would

imagine that it was paid partly by Hurricane and partly by Rhodesia, the same as my own, but I could not say definitely.

Q. Can you recall the hotel that the party of five that you described stayed at in Zurich? A. Yes; we stayed at the Baur-au-lac.

Q. B-a-u-e-r? A. B-a-u-r -a-u- l-a-c, Baur-au-lac.

Q. And Fritz von Opel was staying there too, wasn't he? A. I don't think he was. I think he was staying at the Dolder.

Q. Wasn't that Frankenberg that was staying at the Dolder? A. Frankenberg, as I recall, had a permanent room at the Dolder.

Q. At the Dolder? A. Yes, and I think Mr. von
2227 Opel also stayed there.

Q. And you and Crittenden on at least one occasion went to see Frankenberg at the Dolder, did you not? A. That I don't really recall.

Q. Now, will you state again what was said to you in October, 1931, either by Hoffacker or by Fritz von Opel relating to certain funds? A. Well, I think in October, 1931, the only discussion was about some transactions in General Motors stock that Hoffacker could buy and sell and trade in.

Q. When did you commence auditing the accounts of either Fritz von Opel or Uebersee—that is, for what period? A. We never audited any accounts of Uebersee.

Q. When did you keep books—whatever the technical term is? A. We did not keep books for Uebersee. We prepared tax returns based upon available information.

Q. When did you first engage in any accounting transaction for Fritz von Opel or any other person associated with him that you know of? A. Oh, I would say the latter part of October, 1931.

Q. And you knew at that time, did you not, that his

funds were in a Custodian account at the City Bank-
2228 Farmers Trust Company? A. I don't recollect that there was a custodian account there.

Q. Will you examine Plaintiff's Exhibit 70 and state whether you ever saw it before (handing a document to the witness)? A. These are the papers of the City Bank-Farmers Trust?

Q. This has been admitted by the plaintiffs in this action as a photostatic copy of a document obtained from the files of the City Bank-Farmers Trust Company. State whether you ever saw it before. A. I don't recall ever having seen it.

Q. But, in any event, as of October, 1931, you maintained accounting records, did you not, indicating that Fritz von Opel had certain dollar accounts and certain security accounts in a custodian account? A. We had some work sheets, as I recall.

Q. And they showed that Fritz von Opel had an extended account; isn't that true? A. Oh, I would think so.

Q. Now, whom were you told Fritz von Opel was custodian for? A. My recollection is that it was the City Bank custodian account for him.

2229 Q. Weren't you told that Fritz von Opel was custodian for anyone? A. Not that I recollect.

Q. Didn't you know that he was acting at that time as attorney in fact for any person?

Mr. Boland: I object to that question. Just a minute.

The Court: If he knows it. He testified—

Mr. Boland: May I have the question read again? Maybe I misinterpret it.

(The last question was read by the reporter.)

The Court: I will permit that.

Mr. Boland: Yes. I misunderstood the question.

The Witness: Not that I recall.

By Mr. Burling:

Q. You were never told that shares of Adam Opel, A.G., had been sold to General Motors, and that the letter of sale was signed Wilhelm von Opel by Fritz von Opel, attorney, or attorney in fact? A. I don't have any recollection of it.

Q. About how many times would you say you went to the office of Adler and Company in Zurich in the summer of 1937? A. Well, my recollection would be that during the dates of Monday, Tuesday, Wednesday, and
2230 Thursday that we had conferences and discussions during the part of a morning and that after lunch, for part of or most of the afternoon, and whether we did it on Saturday when we first arrived, I really don't know.

Q. And then you went on this trip you described? A. That is right.

Q. And after your return to Zurich you had additional conferences, did you not? A. No. When we left on the trip, an agreement, a meeting of minds, had been reached, and that was dated as of the date of August 5, before we went way on that trip.

Q. There was a writing drawn up? Is that your testimony? A. There was an agreement that was drawn up and eventually signed, I believe.

Mr. Burling: May I ask if counsel asserts that we have received this or seen it?

Mr. Gallagher: I do not believe I have seen it. Have you got it?

The Witness: I have it here. It was in our files that you have seen.

By Mr. Burling:

Q. May I see it, please? A. Yes (handing a document to Mr. Burling).

2231 Mr. Burling: Your Honor will recall that both Frankenberg and Fritz von Opel testified that there was no business conversation in Zurich at all.

Mr. Gallagher: I do not believe the record reflects that at all, Your Honor.

The Court: Well, I will hear that later.

By Mr. Burling:

Q. Do you recognize Mr. Myron Baum in this courtroom? A. Yes, I recognize him from what I have seen of him.

Q. You told him you were showing him all of your files relating to Uebersee? A. No; I don't think that that was so—

Q. I know it wasn't so. I am asking you if you did not tell him so.

Mr. Gallagher: Just a minute. Let the witness answer the question more fully, Mr. Burling.

Have you anything more to say?

The Witness: I was going to say that Mr. Baum looked through our file that was marked von Opel, but that he did not look through our file marked Uebersee. He did not ask for it.

By Mr. Burling:

Q. You know that Mr. Baum has been working on the Uebersee case as a Government lawyer for years, do
2232 you not? Didn't he tell you that? A. He spoke about the fact that he had been in Europe the summer before.

Q. Didn't he tell you that he had spent years of his life working on the Uebersee case? A. I don't know that he used those exact words.

Q. But, in words or substance, did he not make it clear to you that he was at that time the Government lawyer in charge of the Uebersee case? A. Well, I really did not understand that he was necessarily the Government lawyer in charge of it.

Q. All right. Didn't he tell you he was a Government lawyer working on the Uebersee case? A. That is correct.

Q. And didn't he tell you that he had come to your office to ask you to show him the files relevant to the Uebersee case? A. No, he didn't tell me that.

Q. He did not tell you that? A. No, sir. He came in, as I understood—he was primarily interested in the 1931 tax case and the General Motors transaction folder. Uebersee tax folders through 1933-1936 were shown him.

Q. But you did not show him a document reflecting a business conference which you, Crittenden, and
2233 Fritz von Opel and Frankenberg had in Zurich in 1937? A. The question of Zurich in 1937 was not raised in the course of my conversation with Mr. Baum.

Q. And you did not think he was interested in that kind of document?

Mr. Gallagher: Just a moment, Mr. Burling. There is no obligation on anybody to show anything.

Mr. Burling: There is an obligation not to mislead Government agents.

The Court: Gentlemen, I think you will probably have to object to the question.

Mr. Gallagher: I do object, Your Honor.

The Court: What is pending now?

Mr. Gallagher: I will have to get the question read back myself.

The Court: He is trying to develop that this witness is biased, and I suppose if he withheld anything, if he can

Mr. Gallagher: We are stating that it would not be im- show it, all right. If he cannot, all right.

proper. We are not stating he did do it. The witness stated Mr. Baum had not asked for anything else.

The Court: The question of the bias of the witness may be at stake, and if he knew the man wanted something and he deliberately withheld it, that might be a circumstance showing bias. On the other hand, if he thought he
2234 was inquiring about something else and he did not turn it over, of course, that would show he was not biased. I will give him a certain amount of latitude on it.

Mr. Gallagher: If the Court please, I would like the Court to ask Mr. Bayer to read from his memorandum. He showed me a longhand memorandum of everything Mr. Baum asked him for.

The Court: You can bring that out if there is any damage done.

2235 By Mr. Burling:

Q. Isn't it the fact, Mr. Bayer, that you were given by Baum, or that you were furnished prior to Mr. Baum's visit, a consent which Mr. Connor, who is Mr. Gallagher's partner, and Mr. von Opel signed, authorizing Mr. Baum, as a government attorney, to look for any and all relevant documents? A. The name of Mr. Baum was not mentioned in any instructions that we received authorizing the Department of Justice or any identifiable representative of the Department.

Q. Did Mr. Baum identify himself as a representative of the Department? A. Well, prior to Mr. Baum's visit, a representative had visited our office.

Q. But you also were satisfied by the production of credentials that Mr. Baum was a representative of the Attorney General of the United States, weren't you? A. That is right.

Q. You had in your file at that time, and were aware of, a document signed by Mr. Connor and Mr. von Opel, au-

thorizing you to show the Attorney General's representative any document that was relevant; is that right? A. That is correct.

Mr. Boland: Your Honor, I actually personally dictated that letter. I want it clearly understood and shown on this record that—

2236 Mr. Burling: I object to any statement of the fact—

Mr. Boland: I think it should be cleared up, Your Honor —very much so.

The Court: I am afraid I am going to have to rule in accordance with the procedure, now. We are beginning to get technical, now. You can ask him the question or take the stand yourself later on, if that is material. I do not think this is a matter of any terrific note.

Mr. Gallagher: This does not mean a thing.

The Court: It might not be. I do not think the procedure is difficult at all. Mr. Burling is trying to bring out that this gentleman probably withheld something because of his attachment to Mr. von Opel and that, therefore, he is a biased witness.

Mr. Burling: That is exactly right, Your Honor.

The Court: On the other hand, he is trying to maintain that he went through a very understandable procedure.

I will give you plenty of chance, if anything is brought out against him, for you to bring it up on redirect.

By Mr. Burling:

Q. I have only one more question on this topic.

Is it not the fact, Mr. Bayer, that Mr. Baum asked you to show him the files relating to the Uebersee or von Opel matter? A. He didn't ask to see all files, no.

2237 Q. What did he say? "Just show me a few files or the files you happen to have"? Or what? A. He

said that he was interested in the 1931 tax case in the General Motors transaction, as I understand it.

Q. You understood him to limit himself to that? A. Our working papers on this, which I got out for him and showed him.

He then asked whether he could see our copy of the contract in connection with the General Motors transactions. I got out the file of von Opel and showed him that. He looked at it.

Then, after some discussion, he asked would it be all right if he went through the rest of the file; and he went through the rest of the file marked "von Opel." The file marked "Uebersee" was not asked for. There was no discussion in 1937.

This particular document or paper was in the Uebersee file which Mr. Keefer, of the F. B. I., had already gone through seven or eight months before.

Q. Perhaps you did show it to Mr. Keefer, but you did not understand that Mr. Baum wanted to look at all the files you had on the subject? A. No, sir.

Mr. Burling: That is all I have on that topic. I think I would like a moment to read it.

2238 By Mr. Burling:

Q. When did you leave Zurich to make this trip through Switzerland and northern Italy? A. When did we leave Zurich?

Q. Yes, please. A. Friday morning—no; Thursday afternoon, August 12—Which trip is this, now?

Q. The trip through Switzerland and northern Italy. A. Oh, the automobile trip?

Q. To Italy. A. Friday morning, August 6.

Q. Do you not recall that after you came back from the automobile trip you had further business discussions at the office of Adler and Company? A. There were some further conversations and talks, yes.

Q. Well, you personally went there with Crittenden and Fritz von Opel and met Frankenberger there? A. To the best of my recollection, there was a get-together when we got back, yes.

Q. When did you get back? A. We got back late in the afternoon or early evening of Tuesday, August 10.

Q. When did you have the get-together you just spoke of? A. Wednesday, August 11.

Q. On August 12 you were there again, weren't 2239 you? A. No, we were over in Italy on August—

Q. No; I am talking about the Adler Bank. A. I don't know that we went back the following Thursday morning, but—

Q. Didn't you fix the date of the last meeting in accordance with the date of the memorandum which you had just prepared? A. That is as I recall.

The Court: My recollection of Crittenden is that he started off with two weeks, then he said three weeks, and then on cross-examination he was asked if it may have been five or six days, and he said that sounded about right.

Mr. Burling: I ask that this document be marked in evidence. I will agree to substitute a photostat and return this to the witness if he so desires.

Mr. Gallagher: No objection.

(The document referred to was marked as Defendant's Exhibit 116 and received in evidence.)

Mr. Burling: That is all.

Redirect Examination

By Mr. Gallagher:

Q. In October, 1931, Mr. Bayer, you were never told by Mr. von Opel that his father, at the suggestion of a German

lawyer, had given him a power of attorney and told him to bring it to America with him, and if when he got
2240 here he found out that there might be some delay about using his gift agreement for whatever purpose he wished, he could then have a power of attorney, and, as a result, he could then act as an attorney in fact?

Mr. Burling: I move to strike that question. It is clearly leading and beyond the scope of cross-examination.

Mr Gallagher: That is completely within the scope of cross-examination.

The Court: I do not remember what he talked about on that. The only thing I remember his talking about was this custodian thing.

Mr. Gallagher: He said he did not know that Mr. von Opel signed as an attorney in fact. I am just bringing out that he did not even know he had a power of attorney.

The Court: Ask him what he did.

By Mr. Gallagher:

Q. Did you know whether or not Mr. von Opel had a power of attorney from his father? A. I did not know.

Q. Did Mr. Marin, in the office of Mr. Kresel, work in collaboration with your office in the preparation of tax returns—specifically, these tax returns in 1942 that we have talked about? A. Yes; or vice versa: we may have collaborated with him.

2241 Q. I see. In connection with that consent settlement, were any fraud penalties, or penalties of any nature, assessed in that matter by the Treasury Department? A. I think there were some delinquent-payment penalties, but that was all.

Q. No fraud penalties? A. Not that I know of.

Q. Were all deductions allowed, to the best of your recollection? A. Well, that is—there were deductions allowed.

Mr. Gallagher: That is all, Mr. Bayer.

The Court: I think I will take a 5-minute recess now.

(At this time a short recess was taken. The following then occurred):

Mr. Gallagher: We will call Dr. Meier.

(The testimony of the witness Dr. Eugen Meier was given through Mr. Joseph Laufer, who was first duly sworn to interpret the testimony).

Thereupon, Dr. Eugen Meier was called as a witness and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Gallagher:

Q. Will you state your name, please? A. (In 2242 English) Eugen Meier.

Q. Will you state where you reside? A. (Through the interpreter) Liestal, Switzerland.

Q. Where were you born? A. Staefa, Canton Zurich, Switzerland.

Q. Are you a Swiss citizen now? A. Yes.

Q. Will you state where you were educated? A. I attended the primary schools in Staefa and St. Gallen; the Gymnasium in Zurich; and I studied in Zurich and Geneva.

Q. Are you an attorney? A. Yes, an attorney.

Q. For how many years have you been practicing law? A. Forty-two years.

Q. Are you a member of a law firm in Switzerland? A. Yes, I am a member of a law firm the name of which is Veit, Giesen, Meier, Veit, and Matter.

Q. Are you a Doctor of Laws? A. Yes, I am a Doctor of Laws.

Q. Have you held any official positions in Switzerland? A. I was for several years a member and chairman of the Tax Appeal Commission of Liestal; a member of the Community Council of Liestal—that is, the small com-

munity council. Furthermore, I was a member of the Cantonal Parliament of the Canton of Basle-
2243 Landschaft, and I still am at this time a member of the Board of Legal Examiners of the Canton of Basle.

Q. Have you served in the Swiss Army? A. Yes.

Q. What ranks have you held in that army? A. I am a colonel now, but I am not in active service because I am beyond the legal age.

Q. Did you serve in the Swiss Army in World War I? A. In the first World War I was a captain and in charge of a mountain artillery company.

Q. Did you serve in the Swiss Army in 1939 and 1940? A. I was active during 1939 and 1940 for several months with the chief of staff of the army, until April, 1940.

Q. What position do you occupy with the Uebersee Finanz-Korporation? A. I am a member of the council —administrative council—and president of the Korporation since 1932.

Mr. Gallagher: Your Honor, I should like now to identify these books of the Uebersee Finanz-Korporation, which the defendant has previously stipulated were books of the Korporation. I believe, from this witness' statement to me, that if he is shown them, he will be able to identify them; but he says he cannot state that unless he sees them one by one.

2244 Mr. Burling: I have no idea whether the witness can or cannot. Perhaps if I may be permitted to ask him two or three questions, I may have no objection at all. It is my belief he did not keep the books and never saw them.

Mr. Gallagher: That is correct. He did not keep them. But I know his testimony will be that for several years, at least, they were kept in his office, where Mr. Gaeng worked on them, and that he is familiar with Gaeng's handwriting, and that being shown them individually he

will be able to state whether or not they are Uebersee's books.

Mr. Burling: On counsel's statement, I withdraw the objection.

Mr. Gallagher: I know that statement is correct; but if you wish to ask him, I have no objection to your asking him.

Mr. Burling: If you state that that is what his testimony is, I have no objection.

Mr. Gallagher: Fine. Now, I should like to have, specifically, Plaintiff's Exhibits 149, 150, 151, 152, 153, and 154. Those are the only ones I want to see.

(The exhibits referred to were handed to Mr. Gallagher).

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibits 149, 150, 151, 152, 153, and 154, and I ask you whether or not these are the current books of the Uebersee Finanz-Korporation covering the years noted therein, which are, roughly, from 1937, on some, up through 1948. A. This is the
2245 main ledger of Uebersee Finanz-Korporation.

Mr. Gallagher: He has identified Plaintiff's Exhibit 149.

The Witness: From 1937 on to date.

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 150. A. This is the Journal of Uebersee Finanz-Korporation beginning with, generally, January 1, 1940, to date.

Q. I now show you Plaintiff's Exhibit 151. A. This is the account book containing accounts current from, generally, January 1, 1940, to date.

Q. I show you Plaintiff's Exhibit 152.

The Court: Is this gentleman your last witness?

Mr. Gallagher: Yes, Your Honor, our last witness in our case in chief.

The Witness: This is the book containing the inventories beginning January 1, 1937, to January 1, 1948. No subsequent inventories were taken.

By Mr. Gallagher:

Q. Did you ever see these books, which you have identified as Plaintiff's Exhibits 149, 150, 151, and 152, in Switzerland? A. Yes; I have had these books temporarily in my office in Liestal, and Mr. Gaeng, the third member of the administrative council, came from
2246 time to time to Liestal and brought the books up to date.

The Court: Pardon me. Do you intend to call any other witnesses, Mr. Gallagher?

Mr. Gallagher: We should like to recall Mr. von Opel for some questions.

Mr. Burling: I intend to call this witness as a hostile witness under Rule 43(b), to impeach him on one or two points.

The Court: Well, it will take some time?

Mr. Burling: I will take an hour with this witness, Your Honor.

By Mr. Gallagher:

Q. Is there anything further you have to say? A. It then became too complicated to keep the books in my office, because Mr. Gaeng had to come from time to my office, and Mr. Gaeng then, in the meantime, had been elected to the administrative council—to the administrative board—and took the books with him, and they were kept at his office subsequently.

I would like to ask the question: There are two more books that were shown to me. Whether I am to identify those as well.

Q. Yes. A. This is not a book of the Uebersee Finanz-Korporation A. G.

2247 Mr. Gallagher: This is not. Plaintiff's Exhibit 153 is not. This is of Fritz von Opel; I can see that.

The Witness: I have never seen this book before, and apparently it is not a book of the Uebersee Finanz-Korporation, A. G.

Mr. Gallagher: That was Plaintiff's Exhibit 154.

The Court: Well, I think I will adjourn now until 10 o'clock tomorrow morning.

(At 4:05 p. m. an adjournment was taken until Friday, January 7, 1949, at 10 a. m.)

* * * * *

2250 PROCEEDINGS

Thereupon, DR. EUGEN MEIER resumed the stand and being previously duly sworn, testified as follows:

(The testimony of the witness Dr. Eugen Meier was given through Mr. Joseph Laufer, previously duly sworn to interpret the testimony.)

Direct Examination (resumed)

By Mr. Gallagher:

Q. Dr. Meier, is a Swiss corporation under a duty to keep books and records? A. Yes, sir.

Q. What books must a corporation in Switzerland keep pursuant to Swiss law? A. The statute does not explicitly provide what kind of books must be kept, but it does provide that such books must be kept as will clearly indicate the financial condition of the corporation.

Q. Well, would you state what are the usual bookkeeping methods employed by Swiss corporations? A. It is the custom to have a ledger, a book containing a list of assets or containing balance sheets; furthermore, a book containing accounts current which disclose the liabilities and
2251 assets of the corporation; and, furthermore, a ledger in which daily entries are being made. This does not mean, however, that the entries are being made daily, but they are entered in daily sequence.

Q. I will now have you look at Plaintiff's Exhibit 144 and ask you to state what that book is, if you know. A. This is, according to its inscription and its contents, a ledger of the corporation kept from 1929 to January 1, 1936, by Mr. Gaeng.

Q. I now show you Plaintiff's Exhibit 145 and ask you what that book is. A. This book, Plaintiff's Exhibit 145, is the journal of the Uebersee Finanz-Korporation which was kept from January 1, 1929, to December 31, 1936.

Q. I now show you Plaintiff's Exhibit 146 and ask you to state what that is, please. A. This book, Plaintiff's Exhibit 146, is the book containing balance sheets of the Uebersee Finanz-Korporation from 1929 to 1936. The entries therein are made partly by Mr. Gaeng and partly by an assistant of Mr. Gaeng, whose handwriting also appears in other records and, as far as I know, was the daughter of Mr. Gaeng. She had commercial training.

Q. I show you Plaintiff's Exhibit 147 and ask you to state what that is, please. A. This book, Plaintiff's
2252 Exhibit 147, is the journal of the Uebersee Finanz-Korporation which was kept from January 1, 1937, to December 31, 1939, throughout by Mr. Gaeng.

Q. I now show you Plaintiff's Exhibit 148 and ask you what that is. A. Plaintiff's Exhibit 148 is the book containing accounts current of the Uebersee Finanz-Korporation from January 1, 1937, to December 31, 1939.

Q. I now show you Plaintiff's Exhibit 153 and ask you

to state what that is. A. Yesterday I was of the opinion that this book is not a book of account of Uebersee Finanz-Korporation; but subsequently I have ascertained that the entries therein also pertain to Uebersee Finanz-Korporation. It does represent a book containing accounts current. However, in contrast to the other books it contains only a partial set of accounts current. It is a subsidiary or auxiliary book containing entries of the Uebersee Finanz-Korporation from November 16, 1939, to December 31, 1945.

Q. Dr. Gaeng, do you know as a fact that these books are books and records of the Uebersee Finanz-Korporation?

Mr. Burling: Is this question asked by way of telepathy? This witness is not Mr. Gaeng.

2253 Mr. Gallagher: I am sorry. Dr. Meier.

The Witness: Yes.

By Mr. Gallagher:

Q. Were these books ever kept in your office? A. They were kept temporarily in my office.

Mr. Gallagher: I now offer these exhibits, Your Honor: Plaintiff's Exhibits 144, 145, 146, 147, 148, 149, 150, 151, 152, and 153.

Mr. Burling: No objection.

The Court: That dispenses with the necessity of the stipulation?

Mr. Gallagher: I believe so, Your Honor.

The Court: Without objection, Mr. Burling's request to withdraw the stipulation will be granted.

Mr. Gallagher: All right.

(Plaintiff's Exhibits 144, 145, 146, 147, 148, 149, 150, 152, and 153 were received in evidence.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibits 141, 142, and 143 and ask you to state what those folders are. A. These folders contain bookkeeping vouchers for the respective years; that is, folder 141 contains bookkeeping vouchers for the year 1940; folder 142 contains those for the year 1941; and folder 143 contains those for the year 2254 1942.

Q. Were those folders kept in the regular course of business? A. These folders were kept in the ordinary course of business by Mr. Gaeng, who inserted the bookkeeping vouchers in the folders and made the appropriate entries on the records.

Mr. Gallagher: I now offer Plaintiff's Exhibits 141, 142, and 143, they being the back-up folders to the books which have been previously introduced.

Mr. Burling: No objection.

(Plaintiff's Exhibits 141, 142, and 143 were received in evidence.)

By Mr. Gallagher:

Q. I show you Plaintiff's Exhibits 174, 175, and 176 and ask you to state what those are.

Mr. Burling: If Your Honor please, this embarrasses me somewhat. I understand these are folders which we were not shown, although there was a court order requiring that the books—

Mr. Gallagher: Let me interrupt, if I can help you, Mr. Burling.

The court order required all books up to 1942. They came, and certain specific books came to 1942. Among the

books that came up to 1942 are four of these ex-
2255 hibits 149 to 153, which are our main books which run down through the year 1942.

Mr. Burling: And, those are after 1942. I have no objection.

Mr. Gallagher: That is right. They are bookkeeping entries for entries put in the books after 1942, which had never been previously requested by the Government.

Mr. Burling: I apologize to the Court. I understand.

Mr. Gallagher: These were just brought by Dr. Meier, with him, pursuant to our request.

The Court: All right.

The Witness: These exhibits, 174, 175, and 176, are folders of bookkeeping vouchers along the same lines as those to which I have referred previously, to wit, Exhibit 174 contains bookkeeping vouchers for the years 1946, 1947, and 1948; Exhibit 175 contains those for the years 1944 and 1945; and 176 contains bookkeeping vouchers for the year 1943.

I wish to say that I cannot state whether there are additional vouchers contained therein. I did not make a complete check but merely sampled the vouchers to establish that the inscription on the folders corresponds to what is contained in them.

Mr. Gallagher: I now offer Plaintiff's Exhibits
2256 174, 175, and 176.

(Plaintiff's Exhibits 174, 175 and 176 were received in evidence.)

The Witness: I would like to add that if I am requested to make a detail check, I would require another day to go over all these vouchers separately.

Mr. Gallagher: I do not believe that will be necessary.

Mr. Burling: I would like the record to show that we have never seen these. We have no knowledge either way.

Mr Gallagher: All right.

By Mr. Gallagher:

Q. Are all financial transactions of the Uebersee Finanz-Korporation shown in the hauptbuch, the inventurenbuch, the journal, and the konto korrentbuch? A. Yes.

Mr. Burling: I object to the question unless it is first shown that this man kept the books. I think the testimony is that he did not.

The Court: What is the question?

Mr. Gallagher: The question merely was, Are all financial transactions of Uebersee shown in the four books, the hauptbuch, the inventurenbuch, the journal, and the konto korrentbuch?

2257 The Court: I doubt if he would know that.

Mr. Gallagher: If the books were kept in his office under his supervision, as they were for a period of time—

The Court: I do not understand that he worked on the books.

Mr. Gallagher: He did not work on them.

The Court: I do not know that he would be qualified to know if all the transactions are in them.

Mr. Gallagher: I see.

By Mr. Gallagher:

Q. To the best of your knowledge, do the exhibits previously referred to contain therein all financial transactions of the Uebersee Finanz-Korporation?

Mr. Burling: I object to that also unless it is shown that he had some knowledge.

The Court: Yes.

Mr. Burling: All that he has done is to recognize the covers of these books.

Mr. Gallagher: I will withdraw that and ask this:

By Mr. Gallagher:

Q. If the books which have just been offered in evidence, and which contain therein the hauptbuch, the journal, the konto korrentbuch, and the inventurenbuch, are properly kept under Swiss law, would they then contain all financial transactions of the Uebersee Korporation?

2258 Mr. Burling: I object to that. It is hypothetical.

The Court: I think that would not help us any.

Mr. Gallagher: That is all right, Your Honor.

By Mr. Gallagher:

Q. Dr. Meier, who were the officers and directors of the Uebersee Finanz-Korporation from the year 1941 until the present time? A. May I point out that we cannot speak of directors. In Switzerland a director is the man who manages a corporation under the supervision of the administrative board. That is, he is the man who actually handled the business from day to day. However, in the administrative board—I understood the question to refer to the years 1941 and following?

Q That is right. A. During the entire period I was a member and president of the administrative board. Also during the entire period Dr. Frankenberg was a member of the administrative board. However, Dr. Frankenberg, since May, 1940, has been in the United States and was no longer in Switzerland. The third member of the administrative board was Dr. Henggeler, an attorney at law from Zurich. So far as I recall, he resigned at the end of 1942 or the beginning of 1943.

Since under Swiss law at least two members of
2259 the administrative board must be Swiss citizens, resident in Switzerland, with the resignation of Dr.

Henggeler, I was left; and since Dr. Frankenberg at that time was no longer residing in Switzerland, and since he was at that time an Austrian citizen, and in the meantime I understand he became an American citizen, an additional Swiss member had to be appointed to the administrative board.

In lieu of Dr. Henggeler, Mr. Gaeng was appointed. He is a Swiss citizen and lives in Zurich.

Q Dr. Meier, did the Uebersee Korporation conduct any business operations in Hungary or Germany or in any country with which the United States was at war subsequent to December 6, 1941? A. Would you permit me to give you a little background?

Q. Surely. A. The Uebersee Finanz-Korporation has its major assets here in the United States. In addition, there was the house—building—in St. Moritz where Mr. Fritz von Opel has resided in the past. There was, moreover, a coconut plantation in British East Africa. A further interest of the corporation was the Transdanubia Bauxit, A.G., in Budapest.

The Uebersee Finanz-Korporation in previous years had guaranteed a bank loan to that corporation, in which
2260 it was interested. The Transdanubia Bauxit, A.G., was then requested to repay the loan, so that the securities which the Uebersee Finanz-Korporation had put up as a collateral would be free. The Transdanubia Bauxit, A.G., then repaid this loan as of December 31, 1942. Since that time there were no business relationships with that corporation.

When the upheaval in Hungary took place, the mines corporation was nationalized, and we have put in our claim for the corporation there.

Mr. Burling: May I ask that the date be fixed at which time the mine was nationalized?

By Mr. Gallagher:

Q. Will you state when the mine was nationalized? A. when the upheaval took place—well, the claims were put in in 1946 or 1947. There were statements made in the Swiss press, according to which claims were required to be filed, and I think that we put in our claim about 1947. I don't recall that precisely.

Q. Did the Transdanubia corporation repay the loan directly to you, or did the bank in Zurich merely release your collateral? A. The repayment was not made to us. We were not creditors. The repayment took place to the bank, and thereupon our collateral was released.

2261 Q. Do I understand you correctly to say that the repayment was made to the Hungarian bank in the first instance, and thereafter the Swiss bank in turn released your collateral? A. Yes, released the collateral.

Q. Now, did the Uebersee Korporation invest any money in other corporations or business enterprises after December 6, 1941? A. No.

Q. Did the Uebersee Korporation give any instructions or orders to any persons, agents, corporations, or other business enterprises with respect to the operation of the mines in Hungary subsequent to December 6, 1941? A. I don't know anything of that, but it cannot be possible, because otherwise I would have had notice of it.

May I add that Dr. Frankenberg was at that time in the United States, and so was Mr. Fritz von Opel, who was so severely restricted in his liberty that he could not possibly make such orders.

Then, there was Dr. Henggeler, subsequently replaced by Mr. Gaeng; and they surely did not give such instructions, because they had no competence to give them. And as far as I myself am concerned, I can positively state that I did not give such instructions.

2262 Mr. Burling: I move to strike that part of the answer which relates to what Henggeler or Gaeng "surely" did.

The Court: I will disregard that.

By Mr. Gallagher:

Q. How many members of the administrative council are required to act jointly in performing a function of the corporation? A. There must be two signatures.

Q. Do you know who directed all the policies and investments of the Uebersee Finanz-Korporation?

Mr. Burling: Will you fix the date, please?

Mr. Gallagher: I will strike that. I will reframe the question.

By Mr. Gallagher:

Q. Do you know who directed all investments and policies of the Uebersee Korporation from the year 1932 down to the present time, with particular reference to the period subsequent to December 6, 1941?

Mr Burling: I object to the question on the ground that it contains two. Counsel is asking about 1932 to date, with particular reference to—

Mr. Gallagher: I will strike it again.

By Mr. Gallagher:

Q. Will you state who from 1932 until the present
2263 time always controlled and directed the investments and policy of the Uebersee Korporation? A. That was Mr. Fritz von Opel. I must add this was until 1940, when Mr. von Opel went to the United States. Subsequently no new investments were made, since there were no means to make them.

Q. When was the last time, Dr. Meier, that you saw Wil-

helm von Opel? A. I never saw him. I never saw Mr. Wilhelm von Opel.

Q. When was the last time you received any communications or instructions from him? A. I neither received instructions nor communications from Mr. Wilhelm von Opel.

Q. To your knowledge, did the Uebersee Korporation ever receive any instructions or directions from Wilhelm or Marta von Opel? A. So far as I know, that never took place.

Q. Now, just one last question: On yesterday you stated that you could not identify Plaintiff's Exhibit 154. After the recess, you went over the books again. Will you state now what that book is? A. This exhibit was not in the form in which the other books of Uebersee Finanz-Korporation are, but subsequently, by comparing it with those books, I became convinced that this also is a
2264 record—a book—of the Uebersee Finanz-Korporation containing investments and securities.

Mr. Gallagher: I may state, Mr. Burling, that it is merely a page breakdown of some of the stuff in the journals. Everything in the journals is here, and there is nothing else before you. But for ease you will have the Transdanubia account before you, whereas in the ledger you would have to keep going back and forth. Have you any objection?

Mr. Burling: No.

Mr. Gallagher: I now offer it.

(Plaintiff's Exhibit 154 was received in evidence.)

By Mr. Gallagher:

Q. Did Wilhelm von Opel or Marta von Opel, or any representative of Wilhelm or Marta von Opel, ever vote in the stockholders' meetings of the corporation? A. No.

The entire share capital was held by him, and he was represented by Frima, a Liechtenstein institution, except for the period when the shares were sold to the Union Bank of Switzerland.

Mr. Gallagher: That is all.

Your Honor, Mr. Laufer just stated to me that he would like to take a rest for a few minutes. His voice is
2265 a little tired from doing all this translating.

The Court: We will take a five-minute recess.

(At 10:50 a.m. a recess was takn until 11:10 a. m.)

Cross Examination

By Mr. Burling:

Q. Will you state, if you know, Dr. Meier, what the investment of Uebersee in Transdanubia Bauxit was on December 6, 1941? A. I cannot say that without seeing the books.

Q. Now, I will show you Plaintiff's Exhibit 154, which you identified as one of the books of account of Transdanubia, and ask you if you can now, with the assistance of the book, tell the investment of Uebersee in Transdanubia Bauxit as of December, 1941? A. I would have to have also the other books of account, and together with those I should be in a position to state that.

Mr. Burling: Perhaps we could shorten this. I believe counsel will stipulate that as of that date the investment was in excess of 100,000 Swiss francs.

Mr. Gallagher: We stipulate that. Plus accounts receivable.

Mr Burling: I am not sure of that. That is to say, the money which had been paid in for stock plus cash lent to

Transdanubia was in excess of 100,000 Swiss francs?

2266 Mr. Gallagher: Yes.

By Mr. Burling:

Q. What action did you take as the chief officer of Uebersee after that date with respect to this investment?

Mr. Gallagher: Your Honor, if I may interrupt, I cannot see how the question has anything to do with the question that we have before us in the case.

Mr. Burling: One of the issues in the case—

The Court: I have forgotten the question.

Mr. Gallagher: Our contention is that the fact that he had an investment which remained as an investment during the period of the war is absolutely irrelevant when there is no transaction.

Mr. Burling: All I am trying to find out is if there were any transactions.

The Court: He has been asked by you about activities with Hungary since then.

Mr. Burling: Would you read the question, Mr. Reporter, please?

The Reporter: (Reading) "Question: What action did you take as the chief officer of Uebersee after that date with respect to this investment?"

The Witness: I have not taken any action. We

2267 had no means for engaging in transactions. I have not taken any action whatever.

By Mr. Burling:

Q. Now, Switzerland between 1941 and 1945 was not at war with Hungary was it? A. No.

Q. It would have been possible for you to have either written or to have gone to Budapest during those years, would it not? A. Hungary was occupied by the Germans, as far as I know, in 1941. There was in April, 1941, an in-

vasion of the Balkans by the Germans, and Hungary was occupied by the Germans, and communications were almost impossible.

Q. Is it not the fact that the Germans were in Hungary in 1941 as allies of Hungary? A. Yes, they marched in as friends.

Q. Switzerland was not at war with Germany at that time, was it? A. No.

Q. Do you not think it was possible to communicate between Zurich and Budapest up until the time that the Russian Army occupied Budapest? A. Yes; cor-
2268 respondence was possible.

Q. Did you have any correspondence after December 6, 1941, with any officers or agents of Transdanubia Bauxit? A. Personally, no.

Q. Well, you know, do you not, that someone—some agent of Uebersee Finanz Korporation—did maintain a correspondence with officers of Transdanubia Bauxit?

Mr. Gallagher: When is this occurring?

Mr. Burling: After December 6, 1941.

Will you read the question?

(The last question was read by the reporter.)

A. All I know is that this loan—that is, the credit—the loan agreement was terminated.

By Mr. Burling:

Q. Well, you also know, do you not, that officers of Uebersee were in touch throughout the war period with Transdanubia Bauxit's officers in Budapest? A. I do not know that.

Mr. Gallagher: We have no objection to the answer, and I was going to say that we have no objection to the wit-

ness' answering the question as such; but I would like the record to reflect that there has been no evidence submitted in this case to corroborate that. It is an hypothesis or assumption.

Mr. Burling: I did not ask that hypothesis; I asked a question of fact of the plaintiff corporation.

2269 The Court: It is answered now.

Mr. Gallagher: All right.

By Mr. Burling:

Q. Is it your testimony that after December 6 you paid no attention whatever to an investment of over a hundred thousand Swiss francs? A. Whether I paid any attention to this investment, the investment was embodied in shares and we could not take out these shares. The question of the loan is a different one.

Q. Transdanubia Bauxit was wholly owned by Uebersee; is that right? A. So far as I know, that is so, but I do not know the details, because this was a transaction entered into several years before by Mr. Fritz von Opel, and I could not swear to it.

Q. At any rate, you do not deny that Transdanubia Bauxit was wholly owned by Uebersee at all times after December 6, 1941? A. I believe yes, but there was nothing we could do about it, because nobody would have bought these shares from us. If he would have sold the shares, we would have to sell them to persons within the German territory— that is enemy territory. Thus we kept the shares in the safe and we did not do anything about

2270 them.

Q. Please confine yourself to giving direct answers to my questions.

Mr. Gallagher: And I think, however, Your Honor, so the witness may be well apprised, that he should be

advised through Mr. Laufer that he can make an explanation.

Mr. Burling: I deny that. I do not believe that is correct law.

The Court: It depends upon whether he can answer it yes or no. If it is the type of question where he can, why,—

Mr. Barling: The last question was a very simple one, if Your Honor please.

By Mr. Burling:

Q. Now, you have been a lawyer for over 40 years, haven't you? A. Forty-two years, yes.

Q. And you regard yourself as a man of high moral probity, do you not? A. Must I give an opinion as a witness or state facts?

Q. Well, I would like to know the fact.

The Court: Well, we will assume that.

By Mr. Burling:

Q. And you understood that Fritz von Opel was interned in the United States in 1942, did you not? A. Yes.

Q. Now, is it your testimony that you took no step 2271 to safeguard the interest or to supervise the investment which Uebersee had in Transdanubia during the years 1941, 1942, 1943 and 1944? A. We did supervise it, but we did not sell it.

But you did supervise it? You did carry out your duty of supervising the investment in Transdanubia; is that correct? A. Yes. If we have something in our accounts, we have to keep it there to see to it that it does not get out.

Q. You not only did not sell it; you watched over and supervised the investment; isn't that true?

Mr. Gallagher: Your Honor, I realize what Mr. Burling is driving at in the word "supervised." I think the witness clearly in the past, in response to his questions, indicated clearly what he meant by "supervised," but I think he should clarify it.

The Court: Read the question to him, please.

(The last question was read by the reporter.)

The Witness: It was there and we did not sell. It was there and it stayed there, and we kept it there until the postwar period, and there it is now.

May I ask a question: What should I have done?

By Mr. Burling:

Q. Don't you think that you had a responsibility in your fiduciary capacity of supervising an investment
2272 of over a hundred thousand Swiss francs? A. I would have had a responsibility if I had violated my duty, not under the American law, but under the Swiss law, and I did not violate any duty. If Mr. Fritz von Opel is of a different opinion, he can call me to account for it.

Q. Well, I am not suggesting that Fritz von Opel is trying to sue in any court.

My question is, Since Fritz von Opel was interned in America, you were the only person, were you not, who could supervise his investment of a hundred thousand francs in Transdanubia? A. I do not understand what you mean by "supervision."

Q. Then, I will try to clarify it. Did you not think that you had an obligation, after December 6, 1941, to keep informed as to what the people in Budapest, the officers of Transdanubia, were doing with an investment of over a hundred thousand francs? A. The loan that

was given was not made subject to any conditions or requirements. As far as the share capital was concerned, the investment was made, and I did not see any obligation to do anything about that. Transdanubia was an independent corporation.

Moreover, as I stated before, the policies as to investment and business transactions issued from Mr. Fritz
2273 von Opel.

Q. Do you think that Fritz von Opel was giving instructions as to the mining of bauxite when the United States was at war with Hungary and when Fritz von Opel was in a United States internment camp? A. Hardly.

Q. Very well. Now, who was exercising the responsibility of supervising the officers of Transdanubia Bauxit when Fritz von Opel was interned? A. Our company.

Q. Very well. Thank you.

The question is just—

Mr. Gallagher: Your Honor, we object. We want to hear the explanation.

Mr. Burling: I suggest that if there is an explanation, the appropriate time for it to come out—

Mr. Gallagher: I agree that is one way we can do it, but you have insisted at all times, particularly with Miss Schoch, that she be given an opportunity to explain when she was being cross-examined rather than doing it on redirect, if you will recollect.

Mr. Burling: Certainly, if a witness is asked to explain something, the witness should be allowed to explain without interruption.

The Court: It depends on the question.

(The last question and answer were read by the reporter.)

2274 The Court: Make a note of that and ask him about it on redirect.

Mr. Gallagher: All right, Your Honor.

By Mr. Burling:

Q. Will you describe your position with Uebersee, please? A. I was president of the administrative board.

Q. And you were made president of the administrative board in April or May of 1932, were you not? A. Yes, 1932.

The Court: 1932?

The Interpreter: 1932.

By Mr. Burling:

Q. And at that time will you state where the main office of the Korporation was located? A. At the time when the block of shares was acquired by Mr. Fritz von Opel, the Korporation had its offices at the offices of the Adler and Company.

Q. And that is 16 Peterstrasse; is that right? A. That is the address now. At that time it was Bahnhofstrasse, No. 65. I do not recall the precise number. But Adler and Company has moved from the Bahnhofstrassse address to Peterstrasse.

Q. Do you remember when the move took place? A. No. Possibly we were at the Peterstrasse address 2275 already in 1932, but I cannot state that precisely.

Q. You have been a director of the Alder Bank since 1924, haven't you? A. Not a director, but a president of the Administrative Board, with the exception of one year. I believe one year I was not in that position.

Q. And that was before Fritz von Opel acquired the interest, either directly or for his father, in Uebersee Finanz-Korporation? A. Yes.

Q. Now, is it not a fact that Adler and Company of Zurich has advanced large sums of money to Uebersee

Finanz Korporation in connection with this present lawsuit? A. In connection with this lawsuit, I do not know. I do know that there are large advances made by Adler and Company to Uebersee Finanz-Korporation, but I do not know that it was in connection with this lawsuit.

Q. At any rate, Uebersee presently owes Adler and Company a large sum of money, does it not? A. Certainly. I cannot state the amount, but the amount is recorded in the books.

Q. Well, without stopping to go into the books in detail, can you approximate the amount of money which Uebersee today owes Adler? A. I would rather
2276 look for that in the books, because I would not like to state a sum which is not correct.

Q. What book would you like to look at? A. That could be checked in the account book entitled "Accounts Current."

Q. Now, while Professor Kaufmann is looking for this book, I will go on. Then we will come back to this.

The assets of Uebersee outside of the United States consist of a cocoanut plantation; is that right? A. Yes; a cocoanut plantation in British East Africa, Tanganyka Territory.

Q. And what is that worth, in a round sum? A. It appears on the record as having a value of about 250,000 francs; somewhat more than that.

Q. Did Fritz von Opel ever tell you that he had told an Alien Enemy hearing board that that plantation was not worth more than 12,000 U. S. dollars? A. I do not know about that.

Mr. Gallagher: Would you translate those dollars into francs, Mr. Burling?

The Court: Well, we can do that later. Let us get along with the testimony.

Mr. Gallagher: It is particularly important. We get talking about two sets of figures, one which is many times the American dollars.

Mr. Burling: I take it that it will not be argued
2277 by counsel that 12,000 dollars is the equivalent of 250,000 francs.

The Court: I think we had better go on with the testimony. I want to get through with it.

By Mr. Burling:

Q. You came to the United States by air, did you not? A. Yes.

Q. Who paid for your ticket? A. I paid that myself.

Q. Do you have any understanding with anyone that you will be reimbursed for the cost of your trip to the United States? A. No. May I explain why I am paying for the ticket myself?

Q. Yes, I wish you would. A. I lived with Mr. Fritz von Opel through good times, and I want to bear with him through the bad times.

Q. You also want to have the Adler Bank recover its loan to Uebersee, do you not? A. That is not the reason. The sole reason is the moral obligation I feel to assist Mr. Fritz von Opel.

Q. I am not suggesting any lack of morality; I am merely trying to find a financial fact.

You do know, do you not, that Adler and Company will never be repaid its loan unless the Uebersee Finanz-
Korporation is successful in the present litigation?
2278 A. That is a deliberation, a consideration, which I never entertained.

Q. Well, will you now think about it and tell us if you do not now understand clearly that Adler and Company's loan to Uebersee will never be repaid unless Uebersee is sucessful in this litigation? A. I cannot judge that right now. As far as I am informed, the loan to Uebersee, as far as Adler and Company was concerned, was secured by collateral, and, as far as I remember, the books of

Adler and Company reflect the claim against Uebersee as being one secured by a collateral.

Mr. Burling: May I ask for the book that the witness refers to?

May I ask Dr. Kaufmann to show the witness the books, and then I renew the question.

By Mr. Burling:

Q. What is the present loan from Adler and Company to Uebersee?

(The witness looked at the books in question).

Mr. Burling: I think the record should, however, show, if Your Honor please, that Dr. Kaufmann is pointing out the entries to the witness, who has identified the book.

Mr. Gallagher: If Your Honor please, we will take a recess, if the Court wants to grant it, and let him
2279 do it by himself. We are trying to help speed it up.

The Court: I think perhaps it is a little unusual to have a consultation.

Mr. Gallagher: All right. May we have a recess a moment, Your Honor?

The Court: Why don't we take that up after lunch?

Mr. Kaufmann: I might say there are six accounts between Adler and the Korporation.

Mr. Burling: I want the record to show just what happened.

I will withdraw the question and ask the Court's permission to renew it at the end of the luncheon recess.

The Court: Just tell Dr. Meier to acquaint himself with the books to the extent that he is able to do so during lunch. If he has any knowledge that he can give us without the books, of his own personal knowledge, we will get it.

Mr. Gallagher: I might say at this moment, Your Honor, if it will be of any help to Mr. Burling, if you are talking about the Frankenberg testimony, he said he personally advanced money to Mr. von Opel.

Mr. Burling: Yes. I think there are two separate advancements.

By Mr. Burling:

Q. Now, going back to 1932, when you became a member of the Administrative Board the other two members were Dr. Frankenberg and Henggeler? A. Yes, sir.

2280 And Frankenberg remained an officer from 1932 until he left for Haiti in 1940; is that right? A. He is still a member of the Administrative Board.

Q. And he was also a member of the Administrative Board of the Adler Bank during that period; is that correct? A. He still is.

Q. And is it not correct that Henggeler performed the legal services required by Uebersee from 1932 until the present? A. Of Uebersee Finanz-Korporation?

Q. Yes. A. No, that is not correct. We have divided among ourselves the legal services. I have undertaken several of these legal matters for them since the classification of Uebersee as a banking corporation under the banking statute.

Q. And you also undertook legal services for Uebersee in connection with the United States Government in the year 1935; did you not? A. Yes, sir. I was here in the United States.

Q. You know Mr. Bernard Bernstein, do you not? A. Yes. This is the official of the Treasury Department with whom I had once a conference.

Q. And that conference took place, so far as you know, in the building of the Treasury Department, didn't

2281 it? A. Yes, Treasury Department.

Q. Here in Washington? A. (In English) Here in Washington, yes.

Q. And you understand, of course, that the Treasury Department is a branch of the United States Government? A. (Through the interpreter) Certainly, yes.

Q. And you were accompanied by a Dr. Schlatter of the Swiss Legation; is that right? A. Yes. I was introduced to the Treasury by a verbal note of our then Minister Marc Peter, and thereupon I was invited to that conference.

Q. And the purpose of your going to the Treasury Department was to secure a license for Uebersee to remove from the United States $1,250,000 in gold; is that not true? A. Yes.

Q. And the gold was stored with Ladenburg, Thalmann and Company at that time; is that not true? A. I do not think it was Ladenburg, Thalmann and Company. I was at a bank office in New York. I could point it out, but I do not remember the name. I was taken down to the safe and the safe was opened, and I saw the beautiful boxes with gold, but, unfortunately, I could not take them with me.

Mr. Burling: I take it that there is no dispute that it was Ladenburg, Thalmann and Company?

2282 Mr. Gallagher: No. I do not see where it makes any difference whether it was Ladenburg, Thalmann and Company.

By Mr. Burling:

Q. Who did you think, at the time you were in Mr. Bernstein's office, was the beneficial owner of that gold? A. I have made a memorandum to the files which I sent to the members of the Administrative Board. I have seen it here. It is part of the files.

Q. I am well aware of that. My question is, When you were in Bernstein's office who did you think was the

beneficial owner of the gold? A. I was at that time of the opinion that it was property of the family von Opel. These assets originated from the sale of the Opel Works in Russelsheim. I knew that the Opel Works were not the property of Mr. Fritz von Opel, but of his father and his brothers. I therefore assumed that Fritz von Opel was the agent of this group and that he had some sort of interest in it.

Q. Yes; and that is what you told the United States Treasury Department in 1935, is it not? A. I have stated that along these lines to Mr. Bernstein, but I would like to point out that I did not go there and simply stated that.

Mr. Bernstein asked me who owns the Uebersee, 2283 A. G.

Q. Yes. First you said you did not know, and then Bernstein said, "You must know whether Fritz von Opel was the beneficial owner or not"? Isn't that what happened? A. It was not quite so. First Mr. Bernstein asked me who owns these shares. I stated that these are bearer shares and I cannot see from them who owns them. I only can see who votes them.

Thereupon Mr. Bernstein asked me, "What was your idea about it?" And then I said that it was my idea that they constituted property of the Opel family.

Mr. Burling: May I ask that the clerk hand Your Honor Defendant's Exhibit 66, because I am going to inquire about it now?

The Witness: I would like to add that I was at this time alone in the United States, first in New York and then in Washington. Mr. Fritz von Opel was in the Gulf of Mexico on a fishing expedition.

We then called Mr. Fritz von Opel by radio telegram, and he came as fast as he could.

I checked these dates from the files. I do not want to give the impression that I am indulging in imagination. He was in New York on May 14.

By Mr. Burling:

Q. Now, just a moment. You are under an obligation to answer my question directly and say nothing else
2284 at this time. A. But I see the intention to imply into my statements utterances which I do not want to make, and therefore I am interested in giving a full explanation.

Q. You may be interested and you may think you know what I am doing, but I advise you that American law and not Swiss law governs in this court, and I advise you that you are under an obligation to answer my question directly and then stop.

Mr. Gallagher: Your Honor, I would like the witness at this time, through the interpreter, to be advised that if he cannot answer the question with a categorical yes or no, he can explain.

Mr. Burling: If Your Honor will examine the last question, the witness went on and on and on.

The Court: Yes. I think we will be four or five days at that rate.

I think, Mr. Laufer, you should tell the witness that the attorneys for Uebersee will have a chance to question him on redirect; and, unless he cannot answer the question without a long talk, why, he should make a direct
2285 answer.

By Mr. Burling:

Q. I ask you to examine Defendant's Exhibit 66-A and state whether or not that is the file memorandum which you prepared regarding your conference with Mr. Bernstein. A. Yes, sir.

Q. Does that correctly reflect what took place at the Treasury Department during your conference? A. Yes, sir.

Q. At the time that you were talking to Mr. Bernstein, you felt a moral obligation to tell him what you thought was the truth, did you not? A. Certainly.

Q. So on the date of your conference with Mr. Bernstein, which was April 29—

Mr. Burling: And, if Your Honor please, at this moment I might say that our translation inexplicably bears the wrong date of April 4. The German is apparently clear. It is April 29. May I be permitted to correct the translation?

Mr. Gallagher: We shall be glad to oblige you, Mr. Burling.

Mr. Burling: Will you please read my question as far as it has gone, Mr. Reporter?

The Reporter: (Reading) "Question: So on the
2286 date of your conference with Mr. Bernstein, which was April 29—"

By Mr. Burling:

Q. (Continuing) 1935, you believed that Uebersee Finanz-Korporation was owned beneficially by a group of the von Opel family, which included Fritz von Opel and also included other members of his family? A. That was my opinion on April 29, 1935.

Q. You testified here this morning that you never saw Wilhelm von Opel in your life, did you not? A. No.

Q. So your opinion as of April 29, 1935, was formed on the basis of what was told you by Fritz von Opel; is that not correct? A. No. What I heard from Mr. Fritz von Opel, I heard on May 14.

Q. On April 29 you made a statement to Mr. Bernstein. On the basis of whose statement to you did you make this statement to Mr. Bernstein? A. I have stated that before: that I had formed this idea on the basis of my

knowledge that Mr. Fritz von Opel was not the owner of the Adam Opel, A. G.

Q. Somebody must have told you something in order for you to have had any idea at all? A. No. I can form an idea about something without being told by any
2287 person regarding it. I can form an opinion on that.

Q. Do you hear voices? A. No, I don't hear voices.

Q. Who told you any facts on the basis of which— A. (Interposing) If I am being asked whether I hear voices, I may be given an opportunity of saying how I formed this opinion.

Q. I am trying to find out the name of the person who told you any facts on the basis of which you made that statement to Bernstein. A. Nobody told me anything, but I am not entirely devoid of reason, and I can form my opinions without hearing voices.

Q. In 1932 you knew that Fritz von Opel had purchased the Uebersee shares, did you not? A. Yes, I knew that he purchased Uebersee shares with the money which I imagined to represent the family property of the Opel family—the assets which Uebersee represented.

Q. In other words, prior to April 29, 1935, Fritz von Opel never told you that he himself owned the shares or was the beneficial owner of the property? A. He never made any statements to me with respect to the beneficial ownership in those shares, but he voted those shares
2288 —he held those shares.

Q. I did not ask you anything about who voted shares; I asked you, Is it not true that Fritz von Opel never said, prior to April 29, 1935, that he owned the property? A. No.

Q. Do you mean it is not true, or do you mean, No, he never said that? A. He never stated anything to me about it.

Q. Whatever he did say to you from 1932, when you became the president of the administrative board of the

plaintiff corporation, until May, 1935, caused you to come to the conclusion that the beneficial ownership of Uebersee was in the Opel family; is that correct?

Mr. Boland: I object on the basis that this witness has already testified that he gave the information to the Treasury Department on the basis of nothing that came from Fritz von Opel; he formed his conclusion on the basis which he set forth.

The Court: It is not binding on the cross examiner.

Mr. Boland: The question is—

The Court: I know what he is trying to do. I understand what he is trying to get at. It is not binding on him what the witness says. I will permit him to ask that. He might have made it clear, but if there is any doubt about
2289 it, I will let him answer.

The Witness: No, not on the basis of what he told me. In fact, he never talked about the fact who owned shares. We never talked about that.

By Mr. Burling:

Q. Well, will you explain, then, how you felt qualified to make a statement as to the ownership of the shares to the United States Treasury in April, 1935? A. Gladly.

Q. Please do. A. Yes. Well, I stated that I came to the United States in 1935. I had the mandate from the Uebersee Finanz-Korporation to assert the claims which it had with respect to this gold.

The Uebersee Finanz-Korporation, being a Swiss corporation, has to cast its balance sheets in terms of Swiss francs. On our balance sheets the gold dollars appeared at the gold rate of exchange. If we were paid off in devalued securities for this gold after its seizure, we suffered a loss of one million and one-quarter francs, having a share capital of five hundred thousand francs. It can be understood that we fought against suffering such a loss.

For this purpose I came here and negotiated with the Treasury Department. I appeared there accompa-
2290 nied by Dr. Schlatter. I wrote this memorandum to the files concerning this conference, and I stated therein as follows—

Mr. Burling: If Your Honor please, I wanted to see how far this would go. I submit that this man by his own testimony is a lawyer of 44 years experience. He is also an influential banker. It is inconceivable that he does not know how to answer the question. I would like to ask the reporter to read my question again.

The Court: (To the interpreter) Just ask him to state simply the source of his information as to the ownership of the controlling interest as to which he testified; that is all.

The Witness: I already stated before this is not information supplied to me by a third party, but it is an inference at which I arrived after Mr. Bernstein pressed me in the same fashion as Mr. Burling is doing it now.

Mr. Burling: Well, I feel flattered by that. If Your Honor please, I submit that it is inconceivable that a man of legal training would think that you can form an opinion without having some fact to base it on.

The Court: I think that is a matter to be argued.

Mr. Gallagher: That is what I was going to submit, Your Honor.

2291 The Court: There is one thing that has been going through my mind. What would the significance be of the controlling ownership being in Wilhelm von Opel at that time?

Mr. Burling: That, I believe, Your Honor, would go to show that, in fact, there was no gift; that there was a sham.

The Court: I mean so far as this decision that Mr. Bernstein had to make is concerned. I know your point.

Mr. Burling: That is rather hard to explain, Your Honor, because Uebersee Finanz-Korporation took a very

indirect view, which was ultimately rejected by the Second Circuit.

The Court: That is what I have been trying to get at.

Mr. Burling: I think I can state Mr. Davis' argument. It was that if the plaintiff corporation was beneficially owned by a person not in the United States and by a person who did no business in the United States, then they were entitled to the license as a matter of law. They were entitled to export the gold.

But they were afraid that if it could be shown that the beneficial interest was in a person who did, in fact, do business, then Uebersee would not be entitled to ex-
2292 port the gold.

So at that time Uebersee took the position that Fritz von Opel had bare legal title and that the beneficial interest was in Wilhelm, who was not doing business here.

The Court: Do you agree that that is so?

Mr. Gallagher: That is basically so.

The Court: That is all. If there was a difference about it, I would have to read the arguments, but I thought it would be helpful.

Mr. Gallagher: They argued three different points:

One, that the Uebersee Finanz-Korporation, A. G., as owner of the gold is not present within the jurisdiction through an agent or through doing business or otherwise.

Point two: This is not a case for disregard of the corporate entity by reason of dominance of a sole stockholder.

Point three: Independent of any question as to the corporate entity, no 'owner' of the gold here involved is subject to the jurisdiction of the United States.

Those were the three points they endeavored to cover in their memorandum.

The Court: All right.

Mr. Gallagher: They were all rejected, as Your Honor knows.

2293 The Court: What I wanted to know was, What would be the objective of the parties at that time,

or would they have any? Would they have any reason to indicate one way or the other? That answers it.

Mr. Burling: All we seek to get out of it—

The Court: I know exactly what you are seeking to get. But I wanted to know what the motive, if any, would be on the part of Fritz von Opel or anybody else at that moment.

Mr. Burling: The ultimate motive would be that they were told by counsel that if they could put a beneficial interest in Wilhelm, they could get the gold out, which would then, in Swiss francs, amount to something like over a million Swiss francs.

* * * * * * *

By Mr. Burling:

2294 Q. During the luncheon recess, Dr. Meier, have you been able to find out, from inspecting the books of Uebersee, which you identified this morning, what the present debt owing to Adler and Company by Uebersee is? A. There is no indebtedness at this time.

Q. You change your testimony from this morning and now say that Adler and Company is not owed anything by Uebersee? A. I did not say that this morning. I reserved to myself the statement after I had an opportunity to check, and there were periods when the balance was in favor one way or another, and I had an opportunity to check, and there is no obligation owing at this time.

2295 Q. Will you state whether or not Adler and Company has not advanced large sums of money to Uebersee Finanz Corporation and/or Fritz and Margot von Opel since the end of hostilities between the United States and Germany? A. I would like to state with respect to that that Adler and Company is a banking corporation and that, pursuant to Swiss law, banking secrecy prevails, and I am not authorized to disclose to third parties concerning this matter.

Mr. Burling: If Your Honor please, that has been litigated several times, I think, in this Court and in the

Southern District of New York. Without exception, it has been held that secrecy is a matter of the law of the forum, not of the law of the place of the witness' residence.

Mr. Gallagher: Mr. Burling, we would like the interpreter to advise Dr. Meier that Mr. von Opel gladly lifts that privilege.

The Court: I think that that is undoubtedly the rule: It is the law of the forum.

Mr. Gallagher: Mr. von Opel lifts that privilege.

The Court (To the interpreter): Tell him it is the law of the forum and that Mr. von Opel waives whatever secrets he has in it anyway.

(The interpreter propounded to the witness the statement of the Court.)

2296 The Witness: I don't know.

Mr. Gallagher: If Your Honor please, if we can help Mr. Burling, because we are all mutually trying to expedite this, we recollect the record, and if you want to bring it to the Court's attention, Mr. Frankenberg did personally say he had lent some money.

Mr. Burling: Thank you. I am trying to find out, in addition, if Adler and Company had lent them money. As I understand it, the witness has said he does not know. So we have to go on.

By Mr. Burling:

Q. You testified that at the time you talked to Mr. Bernstein in the Treasury, you understood that Fritz von Opel was off on a fishing trip in the Gulf of Mexico? A. Yes.

Q. When did you see Fritz von Opel for the first time after your conference with Bernstein? A. I don't recollect that, but it is my belief that it was May 14.

Q. At any rate, it was before May 28, 1935, was it not? A. Certainly.

Q. What did Fritz von Opel tell you when you saw him concerning the ownership of the Uebersee shares?

A. I informed him about my conference, and I
2297 further advised him that I had expressed my view that he was representing a family property.

Q. My question to you is, what did Fritz von Opel say to you about this subject? A. He advised me that I was in error regarding this matter; that Uebersee was his personal property, but that a usufruct in favor of his father was outstanding.

Q. As a lawyer, what did you understand him to mean when he said that a usufruct in favor of his father was outstanding? A. At the moment, I did not form any fixed idea.

Q. Well, you knew what a usufruct was, did you not? A. Yes.

Q. Now, when you learned that the property was held subject to a usufruct in favor of Wilhelm von Opel, did you come back to Mr. Bernstein and say you had made a mistake? A. No; but I made a statement in a sworn affidavit which I made before a notary public in New York. From that time on, I did not handle the gold matter any more; it was up to the American attorneys.

Q. I see. When you made this affidavit, did you tell the truth? A. Whether it was correct or incorrect with respect to the usufruct, I do not know; I only stated
2298 therein what Mr. von Opel told me.

Q. But you did not intentionally make any misstatement in 1935 when you filed an affidavit with the Treasury, did you? A. No, certainly not.

Q. I want to show you a German translation of the affidavit and ask you if you recognize it.

Mr. Burling: If Your Honor please, this is a translation which we have prepared of the affidavit, which ap-

pears in Defendant's Exhibit 8, at page 23 of the record in the Second Circuit.

The Witness: It is my statement, but I have not checked yet whether the translation corresponds to what I stated.

Mr. Gallagher (To the interpreter): Why don't you advise him to go along with Mr. Burling, and if there seems to be any contradiction, we will agree that this is correct.

Mr. Burling: I intend to read in English from the official record of the United States Circuit Court of Appeals for the Second Circuit, in which record the affidavit is incorporated; and counsel have agreed that that is a correct copy of the affidavit.

By Mr. Burling:

2299 Q. Now, during the years 1932, 1933, 1934, and 1935, it was your practice, was it not, to take no part in the direct management of the corporation? A. I was a member of the administrative board. It is stated in the translation, "member of the board of directors," which is not quite accurate. But as a member of the administrative board, I did not have a direct hand in the management of its affairs.

Q. Did there ever come a time when you did have a direct hand in the management of the affairs of the corporation? A. That became necessary when Mr. Frankenberg left in the year 1940, and we were left alone without connection with Mr. Fritz von Opel.

Q. In other words, up until 1940, Frankenberg ran the company; isn't that true? A. Administratively speaking, yes. The technical and financial management was in the hands of Fritz von Opel.

Q. Frankenberg was, in the years 1932 through 1935 inclusive, the managing director, wasn't he? A. Managing director is not correct. He was that member of the administrative board that managed the affairs of the company.

Q. You did swear in your affidavit that Frankenberg was the managing director, didn't you? A. That
2300 is evidently the translation. I have had to sign so many documents in which I was referred to as a member of the board of directors.

Q. Do you generally swear to documents in foreign languages without assuring yourself that you understand what you are swearing to? A. No, that is not my practice.

Q. Did you assure yourself in the case of your affidavit of May 28, 1935, that you understood what you were swearing? A. Yes. May I explain how this statement came about?

Q. Surely. A. I was at that time in New York, and I discussed the gold matter with the firm of Davis, Polk, et cetera, and fifty others.

Q. To be exact, it is Davis, Polk, Wardwell, Gardner & Reed, is it not? A. There was another farther down with whom I also negotiated.

Q. But, at any rate, before you signed the affidavit, you had satisfied yourself, had you not, that you understood what it meant? A. I wish to state how this statement was gotten up.

2301 Q. Very well. A. The attorneys presented questions to me, and we formulated the statements therein, because obviously I cannot write English that way. There were also legal statements, and for several days I worked in the library of the New York Bar Association.

Q. We can shorten this if you will just tell me if you satisfied yourself before you swore to the affidavit that you understood what you were swearing to. A. Certainly; I could swear to it, if it related back to that time, even at this moment.

Mr. Burling: Since counsel has agreed that the record is correct, I should like to read one sentence at this point. I want to ask the witness about it, so I will ask that it be translated.

"Dr. Frankenberg is, and has been since 1932, in effect managing director of said corporation, conducting substantially all of its affairs, subject to the advice and consent of the other two directors."

The Witness: It is in order.

By Mr. Burling:

Q. Will you now state whether that sentence which I have read you from your affidavit is correct or incorrect?

A. It is correct.

2302 Q. And that state of facts continued up until 1940, when Dr. Frankenberg left for Haiti; isn't that true? A. Yes, sir.

Q. It was not your practice during any year prior to Frankenberg's departure to take a direct hand in the management; isn't that true? A. Not a direct hand in the management itself.

Q. After your talk with Fritz von Opel but before the moment at which you swore to this affidavit, were you not in doubt as to whether Fritz von Opel held all the shares—had held legal title to all the shares—of Uebersee, or whether he had legal title only to some of them and held the others for members of his family?

Mr. Gallagher: I am a little bit at a loss myself to understand that.

Mr. Burling: I am sorry; I will try to clarify the question.

By Mr. Burling:

Q. Addressing yourself to the time between the moment of the execution of this affidavit and going back to the time you saw Fritz von Opel after his fishing trip— A. This statement was made after the return of Mr. Fritz von Opel.

2303 Q. But you saw Fritz von Opel after his retur on May 14, 1935, did you not? A. I saw him r peatedly. Once he was here in Washington with me du ing a conference with some high official in the Treasur Department, and I saw him repeatedly in New York.

Q. At any rate, at some time in the month of May, 193 prior to May 28, 1935, it was your understanding tha Fritz von Opel either owned personally shares of Uebersee or held a number of shares for members of his family is that not correct? A. No, that was not my opinion. was of the opinion that Fritz von Opel was the sole owne of these, and I stated here in my affidavit.

Q. Then, will you explain why you used the followin words in your affidavit:

"It has always been my understanding that Mr. Frit von Opel, a German citizen and resident of St. Moritz Switzerland, either owned personally or held for mem bers of his family a substantial number of shares o Uebersee Finanz-Korporation, A. G., but I have no per sonal knowledge on the subject."

Mr. Ingoldsby: Your Honor, if I may object at thi point, the witness has testified that prior to May 14, 1935 he had a certain belief regarding the ownership 2304 that on May 14 he met Mr. von Opel, and he wa given a certain explanation. He then says tha based upon that explanation he executed the affidavit o May 28. I do not see what more he can say with regard to ownership.

The Court: He just stated, right this minute, that he thought Fritz von Opel owned the shares of stock. Mr Burling wants to ask why he put that other language in there.

Mr. Burling: That is correct.

Mr. Ingoldsby: Well, I do not want—

The Court: I myself am a little interested to know why he put that in there.

2305 A. There are two different periods of time involved. The first sentence, "It has always been my understanding," until the end of that, refers to the period prior to May 14, 1935. But on May 14, 1935, I heard Mr. Fritz von Opel say that he was the owner of substantially all the stock of said Korporation, subject to the right of usufruct reserved in his father, Wilhelm von Opel. From that time on I no longer believed what was stated in the prior sentence, but what I stated here.

These are two different periods of time involved here.

Q. Isn't it a fact that the reason you used these two sentences, and do not aver on your oath that Fritz von Opel was himself the owner of the shares, is because you knew it was not true and that Fritz von Opel was lying to you when he told you that? A. I do not understand the question. In what respect did Fritz von Opel lie to me? I would like to ask you for an explanation.

Mr. Burling: I do not know, if Your Honor please, whether I am allowed to. I would be glad to, if I may.

The Court: It is rather difficult to get him to answer it that way, I guess.

Mr. Burling: I will try another way. I will withdraw the question—

Mr. Gallagher: Why don't you just ask him if he
2306 believes Fritz von Opel was lying to him?

Mr. Burling: No. I want to know, and I submit it is proper—

The Court: I know what you are trying to do.

By Mr. Burling:

Q. Will you state, if on May 28, 1935, you believed that Fritz von Opel owned the shares, why you did not state that simply as a fact rather than state that "It has always been my understanding that he either owns them personally or holds them for members of his family"? A. I

repeat what I said before—that there are two different periods of time involved.

Prior to the time on May 14, 1935, I came to the conclusion—and I want to point out that I did not communicate with ghosts or heard voices. I was of the opinion—I came to the conclusion—that the shares were held by members of his family; but after May 14, 1935, I was advised that Fritz von Opel was the owner.

Q. We understand that that was said to you. What I am trying to find out is why, if you believed what was said to you, you did not just state what the fact is instead of using this form.

The Court: Let me see if I can cut it short for you. Ask him why he believed that Fritz von Opel owned the control of the stock.

2307 The Witness: I had no reason to disbelieve him.

The Court: Then ask him why he used the other language in this affidavit.

The Witness: I have done that in order to explain why I gave a different explanation to the Treasury Department, since on April 29 I advised Mr. Bernstein in the Treasury Department that the Opel shares were family-owned—the Uebersee shares were owned by the Opel family.

Mr. Gallagher: If I might say, Your Honor, I would like to recall to your attention, in case it might have been lost in the days that have gone by, that these affidavits were prepared originally for use in the Treasury Department, not for use in the District Court.

The Court: I just want to try to get Mr. Burling's question over.

Mr. Gallagher: Yes, sir. That is why I wanted to clarify that they were for use in the Treasury Department.

Mr. Burling: Thank you.

By Mr. Burling:

Q. Up to and including May 28, 1935, Fritz von Opel never attended a meeting of the Board of Directors of Uebersee; is that right? A. Of the Administrative Board, no, certainly not.

Q. Did he ever, so far as you know? A. No. The question is Administrative Board, a meeting of the
2308 Administrative Board.

Q. Your affidavit speaks of a board of directors. Do you know what you meant by that? A. I stated, at folio 80, that, as far as I knew, Fritz von Opel never attended any of these meetings.

Q. And that continued to be true throughout the years down to date, did it not? A. Yes.

Q. And at least up to the 28th day of May, 1935, the board of directors of Uebersee Finanz-Korporation never entrusted Mr. Fritz von Opel with any part of the management of the Korporation, did it? A. No, not the conduct of business. The business was conducted by the Administrative Board. We alone had the rights to sign.

Q. I am not speaking of legal rights. I am asking you, isn't it true that down until at least May 28, 1935, Uebersee never entrusted any part of its management to Fritz von Opel? A. Fritz von Opel received repeatedly power of attorney to conduct specific transactions.

Q. Now, do you agree or disagree with this statement:

"The board of directors of the Korporation has never entrusted Mr. Fritz von Opel any part of the management of the Korporation"?

And that can be answered yes or no, I submit.
2309 A. No. When I refer to management of the business, I meant management of the business as it is done by a director of the company. The fact was that he did get from time to time powers of attorney to conduct specific transactions.

Q. Aren't you able, Dr. Meier, after 44 years of practice of the law, to state yes or no as to whether a sentence read from your own affidavit is true or false? A. I am of the opinion that what I stated therein is correct.

Q. And is it not true also that up until at least May 28, 1935, the Korporation insisted in maintaining the form and substance of corporate independence with respect to Mr. Fritz von Opel and Mr. Wilhelm von Opel? A. Yes.

Q. That is true.

Now, will you state why your thought it appropriate to swear in an affidavit prepared for the Treasury that the Korporation was independent in respect of Wilhelm von Opel? A. This was done because of the statement on May 14, 1935, when Fritz von Opel advised me that the shares of Uebersee were subject to a usufruct in Mr. Wilhelm von Opel. It is for that reason that we inserted in the statement a declaration to the effect that the Korporation maintained its legal independence not only
2310 with respect to Fritz von Opel, but also to Wilhelm von Opel, who is designated here as usufructuary.

Q. Now, at the time, on May 14, 1935, that Fritz von Opel told you that he had legal title and Wilhelm von Opel had the usufructuary interest, do I correctly understand you to say that you believed him? A. I had no reason to disbelieve him.

Q. So the answer is yes? A. Yes.

Q. Do you believe him this minute as you sit on the witness stand and testify under oath? A. I still believe that he made that statement at that time in good faith.

Q. Do you as you this minute sit on this witness stand and testify under oath think that Fritz von Opel told you a correct fact?

Mr. Ingoldsby: I submit that that is argumentative now. He stated, "I have no reason to disbelieve." He then

states that "I believe he made the statement in good faith." The question contains a conclusion of law.

Mr. Burling: The purpose is obvious.

The Court: It may be a mixed conclusion of law and fact.

Mr. Ingoldsby: It is.

Mr. Burling: This is a Swiss lawyer. It is a mixed question of foreign law.

2311 The Court: You may ask him, I suppose.

Mr. Burling: Does your Honor sustain the objection to the form of the question?

The Court: If he understands the question, I will let him answer it.

Mr. Burling: Will you read it, please?

(The last question was read by the reporter.)

The Witness: At that time, yes.

By Mr. Burling:

Q. No. The question is now, this minute. A. I was compelled in the meantime to come to the conclusion that this usufruct was not created.

Q. And who told you that the usufruct was not created? And when? A. Again, these were no ghosts, but I thought about the matter.

Q. Did anybody ever tell you anything after May 28, 1935, on the basis of which you exercised your mind?

Mr. Burling: Just a moment. I can't understand, but it is perfectly clear the answer to the question, "Did anybody tell you anything?" is yes or no. I would request permission, if Your Honor please, to tell the witness through the interpreter that this question can be answered yes or no.

The Court: Just ask him if anybody told him any facts about it and answer it yes or no.

2312 The Witness: No.

By Mr. Burling:

Q. So your testimony is that nobody, from May 28, 1935, on, ever told you any fact concerning the creation or non-creation of the usufruct? A. No.

Q. Now, when you went back to Zurich after you were here in 1935, did you have any talk with Frankenberg about what you had been doing here? A. Certainly.

Q. What was that conversation, please? A. I cannot state that.

Q. But, at any rate, Frankenberg never told you anything about the usufruct? A. I could not state that.

Q. And you did not tell Frankenberg, did you, that you had made an affidavit stating that Fritz von Opel had told you that his father owned the usufructuary interest in the property? A. I cannot say that. I do not know it.

Q. And you have no recollection of Frankenberg's having said anything to you after you told him—in the event that you did—about your affidavit and about the usufruct?

A. In order to answer that question, I would have
2313 to know what I would have told him if I did, in order to be able to say what he told me if he did.

Q. Well, that seems to be a fair point. But, at any rate, you have no recollection now at all of any talk which you ever had with Frankenberg after your return from Washington in 1935 about the usufruct? A. No, not specifically. Of course, I did inform him generally, in part through that memorandum to the files, as to what went on here; but I cannot recall any specific details.

Q. And you do not recall any conversation which you had after May 28, 1935, with Fritz von Opel about the usufruct, do you? A. I do not even recall when I saw Fritz von Opel subsequent to that time.

Q. All right. Now, how is it, if you did not hear voices, that you came to the conclusion that the usufruct had not been created? A. May I talk now without being interrupted?

Q. Provided you answer the question, yes.

Mr. Gallagher: If Your Honor please, I would just like to explain one thing. The difficulty I think the witness has, and of which Mr. Burling is not aware, nor possibly the Court, and that I certainly was not aware of until this noon, is that I found out today that in Switzerland,
2314 when they are testifying in court, or when they appear in court, when the Court asks you something, you never answer yes or no; you have to tell the whole story.

Mr. Burling: I submit this man has been practicing many more years than I have lived. It is inconceivable that he does not know, even if he has not practiced here, how to answer a straight, simple question.

Mr. Gallagher: I want to point out that his explanation might be long. I do not know what it is going to be any more than you do.

The Court: What is the question?

(The last question was read by the reporter.)

The Court: I guess I will have to let him answer it in his own way.

Mr. Burling: I agree, provided he confines himself to the answer.

The Court: The trouble with me is that he can talk a half hour and I would not know whether he is answering or not. I think we will have to go ahead.

Tell him to answer it as briefly as he can, without arguing it.

The Witness: I do not know the legal prerequisites of the German institute of usufruct as to form and defect. I assume that they are similar to those in the Swiss law.

According to Swiss law, a usufruct is created by
2315 transfer of possession. The usufructuary, pursuant to his right of usufruct, votes the shares that are

the subject thereof. The usufructuary is entitled to the use of the res.

All these rights were never asserted by Mr. Wilhelm von Opel. The shares of Uebersee were represented in the general stockholders meetings of Uebersee Finanz-Korporation, A. G. by Frima Verwaltungsanstalt Vaduz.

These considerations have led me to the conclusion that the usufruct was not established.

By Mr. Burling:

Q. In May, 1935, where were the shares of Uebersee, if you knew? A. They were with the Frima Verwaltungsanstalt Gesellschaft.

Q. It is your belief now that in May, 1935, the certificates physically were in Liechtenstein? A. I think so, because they were represented by Mr. Gaeng as the administrative officer of that company.

Q. Nobody ever told you that they were in Box 1917 at the Schweizerische Kreditanstalt and that Dr. Hans Frankenberg had the key to the box? A. It is possible that there was talk about that, but I could not testify to it as a fact.

Q. Do you know whether or not it is true that Fritz von Opel swore that that was the fact in an affi-
2316 davit which he made which was filed together with your own? A. I do not believe that I had knowledge of that.

Q. Coming to a different topic, will you state the period of time again when the books which you identified this morning were kept in your office? A. I can state the beginning precisely. It was shortly after the domicile of the Korporation was removed to Liestal, but I do not know the end, whether it was 1935 or 1936.

Q. What year did it begin? A. It was with the removal of the domicile to Liestal. The books were taken along.

Q. I just want to know the year, please. A. I cannot state it any differently than that it coincided with the removal of the domicile to Liestal. A cable could be addressed to Mr. Gaeng to find out precisely when that was, but I do not know it any other way, but I cannot state when the period ended.

Q. What is your best estimate of when the period ended? A. I do not want to be prosecuted for false testimony, but I believe it was about three or four years.

Q. I want to know the date, as closely as you can fix it, when the books were taken out of your office. A. I cannot say any more than I just stated.

Q. You have not said anything so far, Doctor.

2317 A. According to my estimate—and I do not want to be responsible for that—they were about three or four years in Liestal.

Q. But I do not want to know how long they were in Liestal; I want to know when they were taken out of your office. A. I can't state that.

Q. Was it before 1900?

The Court: We are just wasting time here.

Does he know when they were brought there?

Do you know when they were brought there? Did you say 1935 or 1936?

The Witness: I cannot state it any more definitely. I had to leave Zurich rather precipitately and had no chance to prepare myself, and now I am asked to state under oath details which I simply cannot remember. They lie back ten years or more.

Mr. Burling: If Your Honor please, I do not want to waste Your Honor's time. I am trying to lay the foundation that after some period, which I can't ascertain, this witness never saw the books any more and therefore can't identify them.

Mr. Gallagher: If I can help Mr. Burling on that, I will be only too glad. I think if you asked the question,

"When were the books removed from Liestal and
2318 brought back to Zurich?" you will find out. I think
it was sometime between 1942 and 1943. That is
the statement he made to me. His office is in Liestal.

By Mr. Burling:

Q. Will you try to give us your best estimate as to when the books were taken by Gaeng away from your office in Liestal and back to Zurich? A. I cannot state it any more than I said before.

Q. Can you give us any estimate at all of a date? A. I cannot state. I would be glad to state it, but I just can't.

Mr. Burling: Well, I move to strike all the testimony of this witness concerning these books if he is so unfamiliar with them that he can't make any estimate as to when they were taken out of his office.

The Court: That goes to the weight of his testimony.

Mr. Gallagher: He also testified that he saw them at the board meetings, anyhow.

The Court: I will overrule the motion. He testified they were in there some time.

By Mr. Burling:

Q. Until you saw the books here in Washington just now, when had you seen them for the last time? A. The last time when I saw them was when we prepared the
books for shipment in accordance with what was
2319 demanded to be produced. That is when I saw
them for the last time.

Q. And where were they then? A. At Adler and Company. Now, I do not recall whether the books themselves were brought there or only a list of them.

When the order came we held a meeting of the board of directors. Mr. Gaeng, who was an extremely fearful

man, did not want to ship them, because he did not want to undertake the responsibility. Mr. Gaeng was outvoted by my vote and that of Mr. Frank[illegible]berg, and he made a statement on the record that he did not want to be held responsible if they were lost while in transit.

Q. So you do not remember whether at the time that the books were demanded in this country you saw them or not, is that correct? A. I think that I saw them, but I would not like to swear to it.

Q. Where and when did you see them for the last time before that? A. The books were exhibited for a limited period of time during the general meetings, and I did see them when I held directors meetings together with Gaeng when we were alone in his office.

Q. Is there an entry in any of the books in your 2320 handwriting? A. No.

Q. Now, going back to Transdanubia Bauxit, A. G., will you state, if you know, how the shares were voted during the years 1941 through 1945, inclusive? A. As far as I know, not at all. As far as I know, we never got an invitation to attend a general stockholders meeting.

Q. You owned 100 percent of the stock, didn't you? A. Yes, to my knowledge.

Q. Well, didn't you take any action with respect to voting that stock for all those years?

Mr. Gallagher: State the years. Will you give them again?

Mr. Burling: 1941 through 1945, inclusive.

The Witness: I stated the matter this morning, I did not do anything. And I also said that I am responsible to Mr. von Opel if he sees it fit to call me to account for it.

By Mr. Burling:

Q. Did the fact that you had not voted the shares for 5 years just slip your mind? You did not happen to

think of it? A. I do not know what I should have done.

Q. Well, isn't it customary in Swiss banking practice to vote shares at least once a year—that is, the
2321 shareholders to vote? A. For instance, we have not exercised our vote in the United States. I do not know who exercised that right.

Q. Well, I will be glad to advise you. My client does, Doctor, the Attorney General of the United States.

The Court: I am afraid we are going a little too far afield. We are making no progress at all.

Mr. Burling: I have one more topic.

The Court: Yes. I am going to stop in 10 minutes. We have got to get through this case Monday.

Mr. Burling: What I am trying to bring out is the improbability that this Transdanubia just disappeared

The Court: I followed a considerable line of questioning on that this morning. I will give you as much latitude as I can on it, but we are going an awfully long time on it.

Mr. Burling: Very well, Your Honor. I will come to my last topic.

By Mr. Burling:

Q. What is Consortium O? A. As far as I know—I did not concern myself with this case at the period when the Corporation was established, but, as far as I can see, the Consortium O is—but it was a syndicate that was established during the incorporation of Uebersee.

Q. And the O stands for the Opel family, does it not? A. I imagine so.

2322 Q. And you understood that the Consortium O was a syndicate of the Opels, didn't you? A. To be honest about it, I heard about the syndicate Consortium O for the first time when I came here.

Q. And from whom did you hear about it? A. We

looked the books over together and one of the gentlemen—I believe it was Professor Kaufman—talked to me about it.

Q. You had never seen the entry relating to Consortium O in Switzerland? A. Not to my knowledge.

Mr. Burling: I am sorry. There was one other topic which I forgot, Your Honor.

By Mr. Burling:

Q. Going back to 1931 and 1932, did you act as attorney for Fritz von Opel in attaching any bank accounts? See if I can refresh your recollection. Did you bring an attachment proceeding on behalf of Fritz von Opel against an account in the name of Wilhelm von Opel of 3,800,000 Swiss francs? A. I remember that. An attachment was made pursuant to Swiss law.

Q. The question is, did you handle it? A. So far as I remember, it was an account with the Credit Swiss.

2323 Q. And did you handle the attachment proceeding? A. The attachment was made and I believe a start was made to get a transfer of the amount attached, but Fritz von Opel then instructed me to let the matter ride.

Q. So I take it the answer to my question, did you handle it? is, "Yes"? A. Yes.

Q. And did you bring the proceedings in good faith? A. Certainly, I started it in good faith. It was not carried through.

Q. And what did you understand the basis of the claim for the attachment was? A. Evidently, in order to save the account from the seizure by the Hitler regime or by a coming Hitler regime, in order to get the money out from Germany.

Q. The idea, in other words, was to get Wilhelm von Opel's money out of Germany, wasn't it? A. Evidently, yes.

Mr. Burling: May I say to Your Honor, I am not sure whether I have any further questions? May we adjourn without my resting?

The Court: Do you have any redirect?

Mr. Gallagher: Yes, Your Honor.

The Court: How long will it take?

Mr. Gallagher: Mr. Burling does not want to
2324 finish with the witness now.

Mr. Burling: You are going to stop in two or three minutes?

The Court: Well, I have a meeting in my room, but I was going to let them come in when they arrive. They may be a few minutes late.

Mr. Burling: If you give me 30 seconds, I think I can—

The Court: All right.

By Mr. Burling:

Q. I am going to ask you to examine Defendant's Exhibit 50, which has been conceded to be a copy of a letter from the files of Uebersee Finanz-Korporation, addressed to the Swiss Federal Banking Commission. Do you recognize that letter as having been prepared by you (handing a document to the witness)? A. I do not think that I signed this letter, but I do not know.

Q. Now, I want to read to you a sentence from the letter and then ask what explanation you can give to it in your capacity as president of your corporation:

"The entire capital of our company comes from a single group, which also has a controlling interest in the capital stock."

Mr. Gallagher: Your Honor, I do not know how this witness can explain a letter which he says he does
2325 not know whether he signed or who signed it. He does not know whether he saw it.

Mr. Burling: If I produce a letter from the files of the corporate plaintiff, I submit I am entitled to ask the president of the corporation if he had seen it.

Mr. Gallagher: If he wrote it or had seen it.

The Court: If he had any knowledge of it.

Mr. Gallagher: If he knew about the letter, he can say.

The Court: He can say whether he knows anything about it. I won't draw it against him if he does not know anything about it.

Mr. Gallagher: Will you ask the question again?

Mr. Burling: Will you read the question?

(The last question was read by the reporter.)

By Mr. Burling:

Q. It is a letter from Uebersee to the Swiss Federal Banking Commission, dated November 1935.

Mr. Gallagher: I would like the Court to keep in mind that the date on this letter is subsequent to the formation of the Frima trust.

The Court: Yes; I have that. All right, go ahead.

2326 A. This letter was written after the Swiss banking law was put into effect. Prior to that time Switzerland did not have special banking statutes, but the banks were subject to the code of obligations.

Pursuant to this banking statute, banks and financial institutions similar to banks are required to register under the banking law. The Federal Bank Commission, which is a legal institution, requested the Uebersee to file an application for registration under the Swiss banking law.

The Court: That is not what Mr. Burling is trying to get at; he is trying to find out why the witness is talking about a syndicate.

Mr. Burling: A single group.

The Court (To the interpreter): Ask him why he is talking about a single group.

(The statement of the Court was propounded by the interpreter to the witness.)

The Witness: In order to show that there was not a large number of shareholders but a very narrow group.

By Mr. Burling:

Q. Who did you think the members of this very narrow group were in November, 1935. A. I don't know what is meant thereby. I did not write this letter, and I did not participate in these proceedings until a later date, and I cannot state what other people thought or understood by that version.

2327

Q. You did not oversee or supervise the registration of your company, as required by the Swiss Banking Commission? A. I was not called into this matter until a later date, and at that time I prepared an appeal to the Swiss Federal Court, and pending that appeal the Swiss Banking Commission nevertheless classified the bank as—classified Uebersee as a bank.

I in my appeal to the Swiss Federal Court gave different reasons than those stated here. I stated that Uebersee Finanz-Korporation did not accept foreign—money from outsiders and was not engaged in administering foreign funds. I won on that—we won on that point.

Q. When were you called into this registration problem? A. After the Banking Commission had given a negative answer to our request—that is, classified us as a banking institution.

Q. In any event, it was before June 2, 1937, was it not? A. Undoubtedly.

Q. Then, will you examine Defendant's Exhibit 117-A?

Mr. Burling: I ask for a concession that the document came from the files—

2328 Mr. Gallagher: Is that introduced yet?

Mr. Burling: No; I am introducing it now.

(Defendant's Exhibit 117-A was received in evidence.)

By Mr. Burling:

Q. I ask you to examine Exhibit 117-A. Did you see this letter, which is dated June 2, 1937, which is also addressed by Uebersee to the Swiss Federal Banking Commission? A. According to the entire arrangement and the manner in which it is written, this letter, just as the other one, was not written by me.

Q. Didn't you testify that you did come into the problem of the registration with the Swiss Banking Commission shortly after the letter of November, 1935? A. But I cannot state which letter produced the decision of the Banking Commission against which I appealed to the Federal Court. It may have this letter, or it may have been the subsequent letter.

* * * * *

2332 Q. Will you look, please, at Defendant's Exhibit 117-A, which is a letter from Uebersee Finanz-Korporation to the Swiss Federal Banking Commission, dated June 2, 1937.

Do you have any explanation which you can give, in your capacity as president of the Uebersee Finanz-Korporation, for the words:

"The creditors are recruited from the same circles as our stockholders, and the stockholders belong exclusively to a very small group"?

A. I have not written this letter, and I have seen it for the first time now. It originated during a period when the shares were held by a syndicate of officials of the

Swiss bank—of the Union Bank of Switzerland. I do not know whether the writer of this letter referred to
2334 the syndicate in this letter or what he meant when he used these words.

Mr. Burling: May the record show that the word which Mr. Laufer translated as "syndicate" was the word "Consortium" in the German?

The Court: You can ask him that.

The Witness: Translated?

The Court: I guess he does not know.

Mr. Burling: I think Mr. Laufer knows.

The Court: I think we all heard him say "Consortium"; I don't know. Without objection, I will permit that to go into the record.

Mr. Burling: Thank you.

Redirect Examination

By Mr. Gallagher:

Q. Dr. Meier, in 1932, 1933, and during the years other than the years when these shares of Uebersee were owned by some Swiss, how many stockholders were there in the Uebersee Finanz-Korporation? A. There were four.

Q. Would you name who they were? A. The three members of the Administrative board, to wit, Mr. Frankenberg, Dr. Henggeler, and I myself, and then Mr. Fritz von Opel.

Q. You have just testified, Dr. Meier, that Dr. Henggeler, Dr. Frankenberg, you and Mr. Fritz von Opel owned the shares of stock of Uebersee. Would you
2335 now state whether you considered that a small group? A. Certainly. Is the idea this: that these are too few in number in order to constitute a group?

Q. That is all right. You have answered. A. I would designate even fewer than these as a group.

Q. I see. And are fewer than four considered a group in Switzerland when you are talking of designation of financial interests and ownership? A. Certainly.

Q. Now, Mr. Burling, in the record at page 2323, stated to you as follows:

"Question: And what did you understand the basis of the claim for the attachment was?"

Your answer was: "Evidently, in order to save the account from the seizure by the Hitler regime or by a coming Hitler regime, in order to get the money out from Germany."

Then Mr. Burling asked you:

"The idea, in other words, was to get Wilhelm von Opel's money out of Germany, wasn't it?"

You answered: "Evidently, yes."

Do you have anything further you wish to say with respect to those questions and answers? A. Yes.

Q. Will you please answer? A. This matter dates back some 17 or 18 years. As a matter of fact, I haven't
2336 thought of that matter in the meantime once. When the question was addressed to me, the matter gradually came back to me, without having any documentary evidence at hand. I have meanwhile checked the file again for the matter, and I found that my instructions at the time were to assert a claim which Fritz von Opel held against his father, and the possibility then existed to assert this claim effectively in Switzerland. Under Swiss law, jurisdiction arises when there is property situated in Switzerland, and as a result of the attachment, the claim could be asserted by Mr. Fritz von Opel in Switzerland.

Q. Do you recollect for how long a period of time Mr. Fritz von Opel would have had the use of those Swiss francs if the attachment proceedings had gone on through to a successful conclusion? A. On the basis of the docu-

mentary evidence, I refreshed my recollection, and I must state that without the underlying documents, I could not have recalled it. Fritz von Opel would have been able to use this money for a limited period. A period of about two years.

Q. Now, His Honor requested that I ask you a question on redirect, and it was with respect to a question put to you by Mr. Burling and an answer which you gave. The question was:

"Very well. Now, who was exercising the re-
2337 sponsibility of supervising the officers of Trans-danubia Bauxit when Fritz von Opel was interned?"

The answer was: "Our company."

At that time you wanted to explain, and there was no opportunity for explanation. Do you wish to explain that statement?

I was reading from page 2273 of the record.

Mr. Burling: I object to Mr. Gallagher's statement. There is nothing in the record indicating that the witness wanted to explain anything.

Mr. Gallagher: If you will look at the line below "The question is just—" at that point you said:

"I suggest that if there is an explanation, the appropriate time for it to come out—"

and there was considerable colloquy between us.

His Honor then said I could bring it out on redirect.

Mr. Burling: Page 2273 does not in any way indicate that the witness indicated he wanted to explain anything; it indicates that you wanted an explanation.

Mr. Gallagher: I wanted to hear, because he had started to explain, and you had cut him off.

The Court: Do you know what you want to find out?

Mr. Gallagher: Yes.

The Court: You may ask him a question.

By Mr. Gallagher:

2338 Q. Would you explain what you meant by that answer? A. From a legal point of view, the control over the subsidiary was with our company. As a matter of fact, this control was not exercised, as I have pointed out.

Q. Did you give any orders to the officers of Transdanubia? A. I never gave any order of any kind at any time.

Q. Did the Uebersee Finanz-Korporation, to your knowledge, or any officer thereof, subsequent to December 6, 1941, give any orders to the officers of Transdanubia? A. No.

Q. Did you or any of the other officers of Uebersee direct the operation of the mines in Hungary owned by Transdanubia, to your knowledge?

Mr. Burling: I object to his testifying as to what Hengeler may or may not have done.

Mr. Gallagher: I am asking to his knowledge.

The Court: The ext nt of his knowledge is all right.

By Mr. Gallagher:

Q. To your knowledge, did any officer of Uebersee give any directions subsequent to December 6, 1941, with respect to the problem of operating mines, particularly this Transdanubia mine? A. To my knowledge, no.

2339 Q. Would you explain what you meant by the statement that the Board of Administrators never entrusted Fritz von Opel with any party of the management of the Korporation? A. I wish to state that the general conduct of business—that is, the management of its affairs—was never entrusted to Mr. Fritz von Opel; that, however, from time to time specific powers of attorney were conferred on him for the purpose of transacting specific transactions.

Q. Are you speaking of the inner workings of the board when you say that he was not entrusted with the management? A. Yes, that is what I mean.

Q. You have stated previously that Fritz von Opel controlled all the investments and did all the investing for the Korporation; is that correct? A. At any rate, he acted exclusively in conformity with his directives.

Mr. Gallagher: We have no further questions of Dr. Meier, Your Honor.

Mr. Boland: Your Honor, it will be recalled that sometime in the past a suggestion was made in connection with the stipulation on the Liechtenstein citizenship law. We have a copy of the statute itself, together with the translation, which we would like to have identified.

Mr. Burling: Well, I have some recross examination.

Mr. Boland: Oh, I beg your pardon.

2340 *Recross Examination*

By Mr. Burling:

Q. You say that at all times except when the officers of the Swiss Union Bank held the Uebersee shares, the four stockholders were Frankenberg, Henggeler, Fritz von Opel, and yourself; is that right? A. Yes.

Q. You know that that is entirely inaccurate, do you not? A. A distinction must be made there. I did not know prior to the discussion with Fritz von Opel on May 14, 1935—I was not informed until that time concerning the ownership of the shares.

Q. I am asking you if you do not know now—this very minute—that what you just told Mr. Gallagher was incorrect and untrue. A. I am not aware of that.

Q. Who are the stockholders today? A. As of today, just as I stated here, the four shareholders are Mr. Frankenberg and myself; and in place of Dr. Hengeler, Mr. Gaeng; and Mr. Fritz von Opel.

Q. Don't you know that that is not correct? A. No, I don't know that. I would like to know why it is not correct.

Q. Are you unaware that the owner of 97 shares
2341 of Uebersee is the Verwaltungsanstalt, located in Liechtenstein? A. Yes, that is correct from a legal point of view; but in Switzerland we consider this as economic ownership.

Q. You understand that this is an American court of law, don't you? A. Yes. If Mr. Burling's opinion were correct, I would have won an appeal on matters of taxation which, in fact, I lost. I have taken the position that, legally speaking, Frima and Uebersee Finanz-Korporation are two different personalities, and I was given the decision that, beneficially speaking, Uebersee and Frima are one entity—one unit; but I am grateful for having called my attention to that.

Q. Very good. And you do not have any personal knowledge, do you, as to who the beneficial owner of Frima is? A. I have never considered anybody else to be that except Fritz von Opel—that is, since the time that I was given the information.

Q. In other words, you know that legally Frima owns all but three shares, and the only basis that you have for thinking that Frima is beneficially owned by Fritz von Opel is what he told you on and after May 14, 1935? A. And what I have seen in the company since that time. I refer to my testimony with respect to the usufruct.

Q. Now, you do not think that either you or Frankenberg or Henggeler is a member of the Opel family,
2342 do you? A. I don't have the honor.

Q. Yet you told Bernstein, in the Treasury, that you thought that Uebersee was owned by a small group of members of the Opel family, did you not? A. Yes. As I have testified already at length, I have made that statement at that time not because I was hearing voices, but on the basis of my own inferences.

Q. Now, with respect to the attachment proceedings brought in 1932 against the 3,800,000 Swiss francs in an account in the name of Wilhelm von Opel, after you stopped testifying on Friday you discussed this
2343 matter with counsel, did you not? A. Mr. Fritz von Opel made available to me the correspondence which I had at that time—I do not have it now—and on the basis of this, I had to correct my statement.

Q. What correspondence do you say you examined? A. A letter of Adler and Company addressed to Mr. Wilhelm von Opel, and, further, I believe a letter of Adler and Company addressed to Fritz von Opel.

Q. And did you have any discussion on this topic with anyone other than Fritz von Opel? A. Unfortunately, I could not discuss the matter with the other gentlemen, since I do not understand English sufficiently.

Q. So your testimony is that Fritz von Opel is the only person you spoke to about this? A. I was unable to speak to any of the gentlemen, because I cannot make myself understood.

Q. All right. Now, what conversation did you have with Fritz von Opel on this topic? A. Mr. Fritz von Opel called my attention to the fact that my recollection was obviously not accurate. When he showed me these documents, my recollection was refreshed. In order to initiate arrest—attachment proceedings, there must be a debt owing by the owner of the lease which has been
2344 attached.

If I had gone to the court and told the court that Mr. Wilhelm von Opel wants to get money out of Germany, I would have been unable to obtain an attachment. There had to be a creditor whose claim was being enforced in order to obtain an attachment.

Q. But you understood, in any event, that the purpose of this legal proceeding was to get Wilhelm von Opel's money out of Germany, did you not? A. Not at that time. Now that I remember the matter, after eleven years,

that is what I thought. At that time I went before the court and said, "There is a claim of Fritz von Opel against Wilhelm von Opel. Wilhelm von Opel has property in Switzerland, and I would like to have an attachment to be issued."

Q. And it is the fact, is it not, that Fritz von Opel told you, back in 1932, that his purpose was to help his father get his father's money out of Germany? A. No, that was not so. The German Foreign Exchange Control officers had refused to let Wilhelm von Opel pay out this amount to Fritz von Opel. In order to force the German Foreign Exchange Control officers to permit that, the attachment was obtained and in that manner the power of the German Foreign Exchange Control officers was eliminated.

Q. And that was the purpose of your activity, 2345 wasn't it? A. The purpose was that the father was compelled to pay over to the son. That was the purpose.

Q. But the underlying purpose of bringing the action was to help Wilhelm von Opel get money out of Germany and avoid the German foreign exchange controls? A. Wilhelm von Opel had undertaken a liability toward his son, and in order to enable Wilhelm von Opel to discharge that liability and because the German Foreign Exchange Control authorities had refused to permit that, for that purpose the attachment proceedings were initiated.

Mr. Burling: That is all.

Mr. Gallagher: No further questions.

The Court: Let him step down.

(The witness left the stand.)

Mr. Boland: During the presentation, Your Honor, of my portion of the testimony, there were several exhibits that had not been offered.

At this time I would like to offer 102, 103, 104, and

also the A's of those numbers, in addition to 177 and 177-A.

(Plaintiff's Exhibits 102, 102-A, 103, 103-A, 104, 104-A, 177 and 177-A were received in evidence.)

Mr. Gallagher: Your Honor, at this time we
2346 would like technically to close our case in chief, and I would like to renew three or four motions to strike.

MOTION TO DISMISS COMPLAINT

Mr. Burling: Before those motions are made, I believe it would be proper for me to make a technical motion to dismiss the complaint at the end of the plaintiff's case. I appreciate the motion is merely made technically, because of the fact that our case also is complete, but I think the record should include such motion.

The Court: All right. I will overrule that motion.

Mr. Gallagher: Now, Your Honor will recollect that in the course of the colloquy with Mr. Burling, when we were discussing the Giulini letters, which are the letters from Giulini to Frick, according to the Government's statement, with respect to doing business prior to 1941 and down subsequently through the war years, Your Honor's position was that it might show some continuendo and it might be tied in. Therefore, you permitted it to come in over objection.

Now we would like to renew our objection particularly with respect to those letters which the Government offered in an endeavor to show a doing business of Transdanubia during the years 1942, 1943 and 1944. First of all, they have not been tied in; but, even more important, the
2347 letters are clearly violative of any concept, in our opinion, we submit, of the hearsay rule.

If I might read just a sentence or two from the record, at 1386, when Mr. Burling was undertaking to lay a

predicate for the admission of these letters, he said to Mr. von Opel:

"Question: I show you Government's Exhibit 99-A for identification and ask you if you can identify the stamp signature."

He says yes, he can identify the stamp signature, and he says:

"Question: And is it not the fact that the signature on the right-hand side of the two signatures is that of Georg von Krausz?"

von Opel says in answer:

"I guess it is."

Then he asks him about Exhibit 100-A. I won't take time to go through each one of them. They are all on the same point:

"I show you Defendant's Exhibit 100-A for identification, and ask you if it is not the fact that the signature, that the stamped signature is Transdanubia Bauxit Aktiengesellschaft, and that the right-hand of the two signatures is that of Georg von Krausz."

2348 Mr. von Opel says:

"I am not so sure. It is very badly written. It might be. It starts with a 'K'."

He says:

"And is it not the fact that the left-hand signature is that of Somogyi?

"Answer: I couldn't read it. I never saw the signature."

Mr. Burling offers them, and the letters go on into evidence.

Now, they have not brought Mr. Giulini here to testify.

Mr. Burling: Mr. Giulini is dead, as I stated to counsel.

Mr. Gallagher: There is another Giulini living, of the Giulini brothers.

Mr. Burling: The one who did business with Fritz von Opel—

Mr. Gallagher: There has been nobody here to testify what these letters were, that they really were authentic. There is nobody here to testify that it was Georg Krausz' signature. We submit those letters are violative of the hearsay rule.

The Court: What are the exhibits? I had better have them.

2349 Mr. Gallagher: They are exhibits commencing with Exhibit No. 99. These are Defendant's Exhibits 99, Defendant's 100, Defendant's 101, Defendant's 102, Defendant's 103-A, Defendant's 104-A, and Defendant's 103 and 104. Those are the letters which are referred to between pages 1386 and 1393 of the record.

Mr. Burling: I object to any objection now being made on the ground of hearsay. The only objection which my friends offered was the objection that this was not tied in. I think technically there was an objection of res inter alios acta. They certainly never complained about the authenticity. They only saved an objection to their relevance.

Mr. Gallagher: Your Honor stated at the time, when we were going on in argument, to wait—

The Court: I am afraid, Mr. Burling, I cannot, with propriety, let you make that point, unless he stipulated to it.

Mr. Gallagher: We did not.

The Court: I mean by pretrial or otherwise.

Mr. Gallagher: No, Your Honor.

Mr. Burling: What I am trying to do is to save myself the opportunity to look at the cases and prepare myself and make this argument.

The Court: Well, your authenticity rule is pretty
2350 well established. I will hear you on it.

Mr. Burling: If Your Honor please, we first

identified correspondence which Fritz von Opel was a party to, and we identified a contract which he negotiated and which two officers of Transdanubia Bauxit, which is a wholly-owned subsidiary of the plaintiff here, entered into with Giulini Brothers.

Fritz von Opel identified the signatures of the Transdanubia officers. Those are the signatures which are on the remainder of the letters. He identified the letterhead of Transdanubia Bauxit on which the documents are written; and I submit where we have produced documents appearing to be documents of a corporation which is wholly owned by the plaintiff, which bear the signature—and on some of them Fritz von Opel definitely identified the signature of officers of Transdanubia—they should be admitted unless there is some counterindication that they are not authentic.

The Court: I do not think you gave me quite all of them. Let me get your numbers correct now. Is it 99?

Mr. Gallagher: Your Honor—

The Court: Follow them with me. I want to know what you are talking about. Is it number 99?

Mr. Gallagher: 98, Mr. Ingoldsby says, also. I
2351 thought it started at 99.

It is 99-A.

The Court: I have 99 only. Have you got a 99-A?

Mr. Gallagher: Mr. Burling said 99-A at the time. It was admitted in evidence as 99. It is 99, 100, 101, 102, 103, and 104, and the A's of them.

The Court: I do not have any A's.

Mr. Gallagher: They are the German. These are the translations.

The Court: That is important. I cannot tell whether they have the signatures or not.

Mr. Gallagher: The A's are German.

The Court: These are copies. I would have to see all the A's.

Frankly, I will have to get the facts and the testimony on the identification. There is no question about it.

Mr. Burling: The relevance of my saying I understood that they made a much more limited objection is that if the objection is to the authenticity, I can get a handwriting expert who can examine the signatures of the post-1941 documents and compare them to the documents which Fritz von Opel said he knew about and were, in fact, signatures of the officers of Transdanubia.

Mr. Gallagher: I submit, Your Honor, that still
2352 would have nothing to do with the competency of these documents.

The Court: That would supply the question of authenticity, which you question, don't you see. I did not remember your making any point as to the authenticity of them.

Mr. Gallagher: We could not know at the time whether they might bring a surprise witness.

The Court: I personally do not remember their doing it. The only point you made was that they were beyond a time which was mentioned in the pretrial order, as I recall it.

Mr. Gallagher: That is right. That was my basic objection, but, you see, these are all after Mr. Fritz von Opel, if Your Honor will recollect, advised Transdanubia by wire to lease the mines in May of 1941.

The Court: I am not going to spend a lot of time on the authenticity of it. We are not going to finish tonight, anyhow. I have to meet some Judges in a half hour from out of town, or even earlier, whenever they come. So if there is any question of authenticity, you can straighten that out tomorrow, probably.

Now I will hear you on the relevancy.

Mr. Gallagher: Your Honor, as the record is
2353 reflected—

The Court: Let me find out what we are trying to show. As I understand it, Mr. Burling is trying to show

that Uebersee had control of this Transdanubia Bauxit Corporation, and that after war was declared between the United States and Germany and Hungary Uebersee did some business of a corporation in Hungary. Is that right? Isn't that your point?

Mr. Burling: Yes, Your Honor; that Uebersee was doing business through this wholly-owned subsidiary in Hungary.

The Court: After war was declared.

Mr. Burling: Yes, Your Honor.

The Court: Therefore, Uebersee, being the plaintiff, would not be able to claim this.

Mr. Gallagher: We submit to the contrary—that there is not a scintilla of evidence that Uebersee had anything to do with the operations of Transdanubia during the war.

The Court: That is for argument. That is the argument part. I just want to get your position.

Now, then, the point that Mr. Burling is trying to establish is, in particular, that that happened around 1942 and 1943, as these letters indicate.

Mr. Gallagher: We submit, Your Honor, that the fact that a wholly-owned subsidiary, on its own or under
2354 lease arrangement by others, perhaps, as the evidence indicates in this case, were to operate would be completely irrelevant as far as the issues are concerned in this case. Mere stock ownership is not enough; there has to be more shown.

Now, we in our case have shown, through letters from Transdanubia to von Opel in the spring of 1941, and by cables back to Transdanubia, that he completely severed his operation capacity with Transdanubia and threw them to the wolves, in a sense. He put no more money up and told them to go lease them.

The Court: In other words, you say that the fact that this subsidiary of Transdanubia did business or might have done business in Hungary would not affect Uebersee

unless there was some tying in of that activity with an officer of Uebersee?

Mr. Gallagher: Exactly, Your Honor.

The Court: And that that has not been done?

Mr. Gallagher: And I say that has not been done; and, further, those letters, while they are written apparently on the letterhead of Transdanubia, which has the same kind of a letterhead, and they are signed by a couple of Hungarians, could be completely lies, as far as we know. That does not, we submit, at all show that Uebersee itself, either under lease or otherwise, operated the mines.
2355 We have no way of knowing that and did not know it.

The Court: All right.

Mr. Burling: If Your Honor please, I wish to take sharp issue with Mr. Gallagher about the lease. We contend the evidence establishes just the opposite; that Fritz von Opel recommended that the mines be leased, but that they were not, because those letters show that Transdanubia continued producing bauxite and sending it to Germany all during the war.

Now, our position is that we show that Fritz von Opel went to Budapest; that he negotiated a contract for the shipment of bauxite from Transdanubia to Germany, which was to continue up until 1942, through 1942. We show that when he left Europe for the last time in April, he wrote to Giulini, a German aluminum manufacturer—

Mr. Gallagher: 1940.

Mr. Burling: Excuse me. I am sorry.

Mr. Gallagher: April, 1940.

Mr. Burling: He left April, 1940. He referred to the contract and said, "I trust our business associations will remain pleasant."

The evidence further shows that at all times during the war there was an investment of over a hundred thousand Swiss francs in Transdanubia by Uebersee.

2356 The record further shows that a bank loan was extended by Uebersee ultimately to Transdanubia and that actions were taken by Uebersee officials in 1942 with respect to the extension of that bank loan.

We have further shown, and Fritz von Opel has testified, that the letters which we are now discussing came from the files of Giulini.

We have shown at least a very strong prima facie case that those documents are in fact genuine. They do go to show that the Transdanubia was doing business, that is, producing bauxite, in Hungary.

Then, I say we get a question of law as to whether that much of a showing on the Government's part, and no showing of a cessation of business relationships between Uebersee and Transdanubia, constitutes doing business for the purposes of the Trading with the Enemy Act.

The Court: In other words, you say that if a corporation owned a subsidiary and that subsidiary does business with an enemy, and even if that should be without knowledge of the principal corporation, which is the plaintiff in this case, that would bar its recovering?

Mr. Burling: I said that would be a position which I might occupy if I had to.

The Court: On the question of that weight, I believe I will let that go to the end; I mean until the whole
2357 case is argued. There is no reason why I should not consider that in connection with the whole case.

Of course, the authenticity is one thing. Let me see if I get your position clearly, Mr. Burling. Of course, I know about the other transactions. He is not asking to strike those out. He is simply asking to strike these exhibits out, these letters—

Mr. Burling: Yes, Your Honor.

The Court: And I understand you to say that these letters show that after the United States came to war with Hungary and Germany this Transdanubia, which was wholly owned by the plaintiff corporation, did busi-

ness over there, and that that is binding on the plaintiff corporation, or at least you have a right to contend that, regardless of whether the plaintiff corporation knew about it or not?

Mr. Burling: I contend that also Your Honor should find that the plaintiff corporation did know about it, because the plaintiff corporation was active, prior to 1940, in producing bauxite in Hungary, and there is no adequate showing here that they stopped.

To be sure, Dr. Meier has testified that he personally gave no orders, but yet we do not know who voted the stock, and we do know that after war was declared between Hungary and the United States the plaintiff corpo-
2358 ration continued a bank loan, which I contend is doing business, as I contend that corporation A wholly owns subsidiary corporation B—

Mr. Gallagher: To clarify it, you mean a collateral for the loan?

Mr. Burling: No. I contend that the evidence shows that officers of corporation A—that is, Uebersee—took active steps to continue in existence a bank loan for corporation B after the war, and that that constitutes doing business; and then I want to show through these letters, that Transdanubia was doing business in Hungary because it was producing bauxite and shipping that to Germany for refining.

I say that there was a complete absence of showing that there was a severance between Transdanubia and Uebersee; that there is a burden—a major burden—on the plaintiffs to show that, since we have shown that Fritz von Opel very actively was producing bauxite after the European war had started, and that he entered into a contract—that he negotiated a contract—which was to run up through 1942, and that this bank loan was continued through 1942.

In the face of that evidence, I think there is a presumption that the relationship continued; and my friends have

done nothing other than take the testimony of Dr.
2359 Meier—whatever weight that might be given—to rebut that presumption.

Transdanubia just disappears into a cloud in this record.

Now, of course, one thing that you can say very definitely is that the evidence establishes clearly that the mine was not leased in response to von Opel's recommendation, because these letters show that, on the contrary, Transdanubia went ahead and produced bauxite all during the war.

I think the letters are relevant and competent to show that Transdanubia was producing bauxite and that Transdanubia was doing business with Uebersee, and therefore Uebersee was doing business in an enemy country, and hence barred under the Trading with the Enemy Act.

Mr. Gallagher: I would merely like to point out a few examples. I do not want to make this our argument. This will all be a portion of our closing argument, Your Honor, but I merely want to point out that, in our opinion, if corporation A wholly owns corporation B, if there is no showing that corporation A gives directions as to the operation of corporation B during a war year, the fact that it is a 100 per cent investment is meaningless.

Mr. Burling makes quite a point of the fact that
2360 subsequent to the beginning of the war with England in 1939, these mines produced ore. Mr. von Opel's attitude is reflected when he says that 2,000 tons of ore came out of that mine, and the reason he dropped out of it was because he lost money. But General Motors, which bought the very plant which started the whole problem, namely, Opel Works, was being operated by Americans in Germany up until the time of Pearl Harbor, when the war was on between Germany and England; and their own deposition which they are going to submit, of Mr. Mooney, will show that he was in Germany running the Opel Works when England was at war with Germany.

Mr. Burling: I submit, before we get to that, which I think is incorrect, we had better read the Mooney deposition. I do not think it is correct.

Mr. Gallagher: I am merely pointing it out at this time because it is relevant to your argument. As far as the loan is concerned, I merely want to reclarify that at the moment—

The Court: The loan is not the point. That is for later argument. The only thing I am concerned about is whether these letters would have any pertinency or establish any claim of plaintiff corporation's having done business with an enemy.

Mr. Gallagher: We submit that, even without the
2361 cables from von Opel to Transdanubia, telling them, "No more money; go lease the mines," without a showing that Uebersee or one of its officers operated the Transdanubia mines, the fact that we own 100 per cent—the shares—is meaningless, because it is certainly apparent that the Hungarian Government would certainly take it over and mine the ore during the war, whether you had your own employees in or not.

The Court: I think I can dispose of this at the proper time.

Do you want leave to prove that the handwriting on these documents is the same as those on admitted documents?

Mr. Burling: Yes, Your Honor. I want that unless my friend will concede it.

The Court: I asked him if he wanted the opportunity to compare the handwritings on these exhibits with those that are already in evidence properly identified as authentic documents of Transdanubia.

Mr. Gallagher: If he feels it is going to show anything, I suggest that he do it; but, as far as we are concerned, we still feel that they do not carry any burden.

The Court: I will give him an opportunity to do it. I am not going to hold the case up for it. You can do that

overnight. He has a deposition to read tomorrow.
2362 I am very much inclined to rule on this whole matter as part of the disposition of the case. As you gentlemen know, we are not in a position, in these evidence propositions, to take the time during the trial to rule on the inadmissibility, unless they are plainly inadmissible. Now, then, in my judgment they are not plainly inadmissible. I have some trouble with the point. I will be frank with you. I do not know how much the action of a wholly owned subsidiary would be binding on another corporation, unless you specifically do it; but I will give you a chance to argue that at the conclusion of the case. It comes within the part of the Trading with the Enemy Act that relates to— What is that language?

Mr. Gallagher: Doing business.

The Court: Doing business with an enemy.

Mr. Gallagher: It is Section 2.

The Court: I think I will dispose of it that way.

I will permit Mr. Burling tomorrow, if he wants to, to properly authenticate them. I think under the law he has a right to tie in the signatures with admitted signatures that have already been produced in evidence of these parties. If he wants to do that, I will give him a chance to do that tomorrow morning; and then, unless I change my mind overnight, which I do not think I will, I will
2363 leave the matter of the handling of it for final argument. I frankly do not know the answer. I will let you submit that at the complete disposition.

You could make that as one of your proposed findings of fact and conclusions of law, and Mr. Burling can ask me to find—you can dispose of it that way—as a matter of fact that Mr. von Opel in 1940 gave certain instructions, and that beginning in 1941, after the war, there was nothing given to stop them, but, on the contrary, that there were certain loans made, and so forth, and that Transdanubia, under these letters, carried on operations.

You can make that as a finding of fact, and then, on that, you conclude as a matter of law that that was doing business with an enemy within the meaning of the Act.

You can take the position, on the contrary, that it was not incumbent upon them, but this was a separate entity, and Mr. von Opel did not have to give countermanding orders to stop it, and you can make a finding of fact based on what Dr. Meier said, that nothing was done, and so forth, and that that is not doing business. I think you can enlarge it.

I think that is really the better way to do that on this, because it probably is a material matter in this
2364 case, which ought to be passed on in the admitting and striking of evidence.

On the authenticity of it, I think I would have to rule it out without authentication.

I think you can do that tomorrow.

How long will it take to read the deposition?

Mr. Gallagher: I have a couple of more motions to make.

I would also like to renew my objection to Defendant's Exhibit 30, which the Court permitted, at page 295 of the record, the Government to identify and then permitted them to introduce it in the record.

That was a letter that was written by John Thomas Smith of General Motors to Mr. Wronker-Flatow, who, under inquiry by Mr. Burling, said he had a faint recollection of it. But we submit that is surely hearsay. John Thomas Smith is not here, and we wish to renew our objection and move that the letter be withdrawn. That letter would call for considerable controverting—

The Court: Tell me the circumstances of this. I have forgotten.

Mr. Gallagher: Well, at page 295 of the record he had Mr. Wronker-Flatow—Mr. Stansfield—on the stand—

The Court: That is Mr. Wronker-Flatow?

Mr. Gallagher: That is right, and Mr. Burling
2365 started asking him, on page 295:

"Question: I show you now a letter dated June 2, 1932, a copy of such a letter, which was addressed by the general counsel to Dr. Manfred Wronker-Flatow; and I would like to ask you to look at it, to read it, and see whether it refreshes your recollection, whether you received this letter."

He says:

"That was in '32. I remember some, now that I read this letter, that I got some information from John Thomas Smith on the things; but they were transactions where I was not involved," and so forth.

"Question: But you recall having received this letter?

"Answer: I have a faint recollection that I did receive such a letter. You see, there were many things happened; I don't recall all of them.

"Mr. Burling: I will ask to have this letter marked as Defendant's Exhibit 30. The original is in English"—

Mr. Burling: You omitted a sentence in reading it. You omitted a sentence:

"It is telling the whole story."

Mr. Gallagher: "It is telling the whole story."

That is right; that should be in there.

2366 We had objected, prior to the showing of the letter, at page 295, and I stated, at the conclusion of that statement, that there was no further need to restate our objection.

The Court: Is that all there is on it?

Mr. Gallagher: Yes, Your Honor.

Mr. Burling: No. If Your Honor please, at the top of page 297, the record reads as follows:

"The letter was accordingly marked and received in evidence as Defendant's Exhibit No. 30."

It went into evidence.

The Court: Well, I guess he can move to strike it even if it is in.

What do you say about that, Mr. Burling? His objection is that it is hearsay, a statement on the part of Smith.

Mr. Burling: Actually I was reading a deposition. I will ask Mr. Baum to argue it.

Mr. Baum: Your Honor, the letter and the deposition were read, and what Mr. Gallagher was reading was the deposition before Mr. Stansfield appeared in person, pursuant to your request, and in that deposition he was asked whether or not there had not been a proposal by the von Opels to reacquire the stock; and he said, when we got to this letter, that he remembered such a proposal,
2367 which is what is stated in this letter, by John Thomas Smith, and he remembered some wild schemes of fictitious proposals, and then he demurred at using "fictitious."

If I may have a moment, Your Honor, I will find that.

Mr. Gallagher: But the only thing that is in evidence out of that deposition is what is read in, Mr. Baum. I do not think anything further should be read into the record out of that at this time.

2368 The Court: I have got to get this straight. Is this the witness Stansfield testifying?

Mr. Gallagher: No; this is Stansfield at the time of the deposition.

The Court: That is right; I had not finished yet: Stansfield by deposition before he came here to the stand?

Mr. Gallagher: That is correct.

The Court: On direct by you, he was asked— What question was it?

Mr. Gallagher: This is their witness; they were interrogating him at that time. It was direct because they had brought him here, although we brought him here by offering him, as you recollect. When they came to that portion of the deposition where they were going to put in this

letter from John Thomas Smith, I objected. I advised the Court:

"If Your Honor wants to read it, we have no objection to Your Honor's reading it."

But on the basis—

The Court: That is purely hearsay.

Mr. Baum: No, Your Honor, because it is my recollection that part of the deposition that is read into this record, Mr. Gallagher to the contrary notwithstanding, identified—in other words, the witness said he remembered facts which were stated in that letter. It is a letter addressed to the witness. He remembered having re-
2369 ceived it.

The Court: You should have asked him to testify to the facts from his own recollection. I do not know how Stansfield could adopt facts that this man told him in a letter except on hearsay, unless he was present when it occurred.

Mr. Baum: Well, he was present throughout, as you recall, Your Honor. He was counsel for Adam Opel, A. G.

The Court: He got this in Germany, and this was written from New York, wasn't it?

Mr. Baum: That is correct. By the way, the attorneys for the plaintiff have admitted that this is a letter written in the regular course of business.

The Court: Well, he could have had letters written in the regular course of business, and they would be hearsay. The point counsel is trying to make is that Mr. Smith makes certain statements in this letter as to which he had no right to cross-examine or no privilege of cross-examining him on and of not having the judge see his manner of answering. That is always subject to the objection of hearsay.

Mr. Baum: Mr. Smith has been dead for about a year and a half.

The Court: That does not admit his letters.

Mr. Baum: But the testimony of the witness, when he

was shown the letters was, "Yes, I remember these. Mr. Connor, who is Mr. Gallagher's partner, had plenty of opportunity—

Mr. Gallagher: I just read where he said:

2370 "I have a faint recollection that I did receive such a letter."

He said, "I remember I got information from John Thomas Smith, but the transactions were forward and backward."

The Court: I will let you pick out the part of the deposition which you say shows that Mr. Stansfield was testifying to facts in here. Even then, I do not see how I could let this stay in, because he had probably refreshed his recollection from a lot of documents not properly used in this case. I do not want to get in any error on an important point like this. I will give you a chance to argue that in the morning.

Mr. Gallagher: I would like to say, by way of going back, that you stated our position with respect to Transdanubia. We have had no right of cross-examination of either of those men whose letters they want to try to put in now, as to whether or not we did business with them or what the situation is. That is just exactly what we have been deprived of.

The Court: What letters do you mean?

Mr. Gallagher: The letters we are talking about, 99 to 104.

Mr. Burling: Those letters were written by officers of a wholly-owned subsidiary.

The Court: What he wants to show is that they were taken from the files of the regular corporation.

2371 Mr. Gallagher: No, they are not taken from the files of our corporation, if there has been any misunderstanding on that. They are taken from files of a German in Germany by the name of Giulini. These are not taken from Transdanubia's files. No, sir. I am sorry

if I have not made this clear. These are out of a German witness' file in Germany.

The Court: I will hear you on that tomorrow morning. What is your third point? Maybe you had better bring that up. That does involve a point I had not thought of.

Mr. Gallagher: Then, the third point is something I merely want to clarify for the record. Defendant's Exhibits 55 and 56, which were the General Motors' interoffice fourth degree hearsay memorandum, Your Honor subsequently sustained objection to, and they withdrew them. At that time you made a statement that that portion of the testimony that might not have pertained to the objection could still stand. I should now like to renew that objection and move to strike now the testimony on pages 996 through 1009, which pertain to those General Motors exhibits which are now out of evidence.

The Court: I won't consider any testimony that relates to them.

Mr. Gallagher: That is what had me a little confused. In reading over the transcript and going back, there was a little language that had me perturbed as to whether something would be standing in that area.

2372 The Court: What I probably said, or what I meant to say, was that if he had any personal knowledge of the transaction, I would permit it, but the interoffice memorandum itself I did not believe was permissible.

Mr. Gallagher: That is all, Your Honor.

The Court: I will give you a chance to look that up tomorrow. Then you can prove your handwritings and can argue the proposition more in detail. I had thought I would put it off to the end, but I think I can dispose of it tomorrow.

There is no reason why we cannot close this whole case tomorrow, is there?

Mr. Gallagher: I certainly see none. I have a few questions to ask Mr. von Opel and two questions of Dr. Kronstein.

Mr. Burling: We shall have 20 minutes on a deposition plus a handwriting expert.

The Court: Maybe you gentlemen can work out that authenticity yourselves. If you cannot, I will hear it.

We will adjourn until 10 o'clock tomorrow morning.

(At 3:35 p.m. an adjournment was taken until Tuesday, January 11, 1949, at 10 a.m.)

* * * * * *

Mr. Gallagher: If Your Honor please, if I may say so, we overlooked yesterday, in our objection and our motion to strike, also, including Defendant's Exhibits 90 and 98. There was a little confusion in the record.

The Court: Let me have the numbers, now.

Mr. Gallagher: Nos. 90, 98, and 99 through 104. As to those our objection is renewed, and also a motion to strike.

For clarification, I should like to state to the Court, in view of Your Honor's statement yesterday, and to make clear any confusion, that these documents were never shown to us before trial. There was no stipulation covering these. They are not out of the files of either Uebersee or Transdanubia, to our knowledge. They are out of the files of Giulini, and not shown to have been kept in the regular course of business.

Mr. Frick, of Giulini Brothers, whose name was mentioned by Mr. Burling, is, to our knowledge, alive, and, to the best of our knowledge, was not brought.

Mr. Burling: I believe 97 and 98 and 90-A fall into different categories.

There is no question there whatsoever as to the genuineness of the documents, because the genuineness of the signature of the officer of Transdanubia was flatly and un-

equivocally admitted by Fritz von Opel. As to 98,
2377 it was an aid memoir or a memorandum prepared by somebody in Giulini regarding what apparently was a conference that took place between them and some people in Transdanubia.

The Court: I am going to rule on that as soon as I get the testimony in. Do you have some experts?

Mr. Burling: No, Your Honor, we do not. We were told by a handwriting expert that some of these signatures—there being two of each man—are inadequate, so that the expert could not testify unqualifiedly.

The Court: Suppose you read your deposition while Mr. Yates is assembling these. Then we will come right back to this.

DEPOSITION OF JAMES D. MOONEY

Mr. Baum: This is the deposition of James D. Mooney, taken in Toledo, Ohio.

May I ask, Your Honor: Is it agreed by counsel that we need not read the opening paragraph?

Mr. Gallagher: That is O. K.

(The deposition of the witness James D. Mooney was then read. Mr. Baum read the questions on direct examination, and Mr. Goldstein read the answers.)

"JAMES D. MOONEY, of lawful age, being by me first duly sworn as hereinafter certified, deposes and says as follows:

Direct Examination

By Mr. Harris:

2378 "Q. Mr. Mooney, will you state your full name for the record? A. James D. Mooney.

"Q. Where is your residence? A. 2404 Parkwood Avenue, Toledo, Ohio.

"Q. What is your present occupation? A. I am Chairman of the Board and President of Willys Overland Motors, Incorporated, Toledo, Ohio.

"Q. For how long have you held that position? A. Since January, 1946.

"Q. Were you ever employed by the General Motors Corporation? A. Yes, sir.

"Q. During what period? A. From 1919 to 1941, and then later from 1945 to 1946.

"Q. In what capacities were you employed by General Motors? Could you give us the various capacities chronologically by dates? A. Yes, sir.

"Q. What I would like to get is simply a description of the positions you held and the dates? A. I guess that is it (refers to paper).

"Mr. Harris: Suppose you take down the following, in answer to this question: Mr. Mooney stated that
2379 he had recently prepared a summary of his experience, for the Willys Overland Publicity Department. It was stipulated by Mr. Gallagher and Mr. Harris that this summary prepared by Mr. Mooney might be copied into the record, in answer to the question.

"Mr. Gallagher: That is all right."

Mr. Baum: On page 3:

"Thereupon, a copy was made for the reporter, and is herein incorporated into the record as follows:

"James D. Mooney was graduated from the Case Institute of Technology, Cleveland, Ohio, 1908, with a Bachelor of Science degree in Mining and Metallurgy. Later he received post-graduate degrees in Mechanical Engineering and Doctor of Engineering from Case and a

Bachelor of Science degree in Commerce from New York University.

"Mr. Mooney, during World War I, served overseas as a Captain in the 309th Ammunition Regiment, 159th Field Artillery.

"After World War I, Mr. Mooney became a special assistant to Alfred P. Sloan who then, in 1919, was a Vice-President of General Motors, in charge of the Accessories Divisions.

"In 1920, Mr. Mooney was made President and General Manager of the Remy Electric Company, a General
2380 Motors subsidiary, manufacturing electrical equipment, starting motors, generators and ignition for cars and trucks.

"In December, 1921, he was made General Manager of the General Motors Export Company.

"In 1922, he was elected to the General Motors Board of Directors, and during the following years served on the Corporation's Operation Committee, Executive Committee and Engineering Committee.

"He became successively President of the General Motors Export Company, President of the General Motors Overseas Corporation and Group Executive in charge of the Corporation's Overseas Operations.

"From 1923 to 1939, he installed, constructed and organized the Corporation's world-wide scheme of overseas manufacturing and assembly plants and warehouses.

"In 1940, Mr. Mooney was relieved of his responsibilities for the General Motors Overseas Operations, and was made Chairman of a small group of Directors given special sanction by the Board to plan and execute quickly the conversion of the Corporation's manufacturing facilities from the production of cars and trucks to the production of planes, engines, tanks, guns and ammunition for the Army and Navy.

"He became a member of the Naval Reserve in 1937, and

was called into active service a month before Pearl
2381 Harbor. He was made head of the Production Engineering Section of the Bureau of Aeronautics with the rank of Lieutenant Commander. He later was transferred to the Advance Base Division, and was promoted to the rank of Captain while on duty in England as a member of the staff planning the Normandy invasion.

"In 1944-45 he served on the staff of the Chief of Naval Operations as part of the planning group charged with making recommendations for improving naval operations in the Pacific.

"In 1945, upon release from active service with the Navy, Mr. Mooney returned to General Motors and resumed his duties as Group Executive in charge of the Overseas Operations, a member of the Board of Directors and Administration Committee.

"Mr. Mooney resigned from General Motors in January, 1946, to join Willys-Overland Motors, as Chairman of the Board, President, Chairman of the Executive Committee and a member of the Finance Committee."

"Q. I call it to your attention, Mr. Mooney, that this memorandum of your experience which you prepared states that from 1923 to 1939, you were with the General Motors Export Company. In what capacity were you serving with General Motors Export Corporation in 1931 and 1932? A. Well, I was the responsible operating executive for anything in the General Motors Corporation that was
2382 outside of the United States and Canada.

"Q. That includes Germany? A. Oh, yes.

"Q. Where was your office? A. New York.

"Q. Did you sometimes travel through Germany during that period on the business of General Motors Export? A. Yes, sir."

Mr. Baum: I skip, now, to the first question on page 6:

"Q. Did you know in your capacity as President of General Motors Export Corporation who owned the stock of Adam Opel A. G. in the year 1930 and the first part of 1931? A. At that time I knew who owned it. It was part of my responsibility to know who owned it.

"Q. Who did own Adam Opel A. G. at that time? A. That is where you get into this memory thing. At that time I knew who owned it; but I would have to depend on my memory now for 1931 and 1932, and that is where I have to saw off because I could not say positively now out of my memory. Therefore might I sum up the answer: at the time I had a very definite responsibility for knowing who owned the stock of all these companies; that was my peculiar responsibility, and I knew at that time.

2383 "Q. But you no longer recall with certainty the details of the stock ownership of Adam Opel A. G. in 1930? A. That is right.

"Q. For the purpose of refreshing your recollection, I show you now a photostat of a letter dated April 11, 1929, from Wilhelm von Opel to the National City Bank, of New York. This photostat has been marked Defendant's Exhibit A. The typed words 'Exhibit A' at the top are not part of the original letter. Will you please read that?

"(Witness does.)

"Q. Does this refresh your recollection as to the ownership of certain of the shares of stock of Adam Opel A. G. during the year 1930? * * *

"Q. Will you go ahead and answer the question, Mr. Mooney? A. What is the question?"

Mr. Baum: The question was read to the witness.

"A. No, it does not.

"Q. I call it to your attention that this letter from Wilhelm von Opel to the National City Bank appears to constitute part of an agreement whereby he deposited 600

shares of Adam Opel, A. G. with the Bank, subject
2384 to certain rights of purchase by General Motors, or subject to certain rights on the part of Mr. von Opel to require General Motors to purchase. Does that refresh your recollection? * * *

"Q. You are to go ahead and answer the question, Mr. Mooney. A. Yes, sir.

"Q. Do you now recall that this was part of an arrangement between Wilhelm von Opel and General Motors whereby these 600 shares of stock owned by Wilhelm von Opel were deposited with the National City Bank, subject to the arrangements set out in this letter? A. I recall the general theory or the substance of the deal between Opel and General Motors because I was in on that; and, naturally, it was left to our General Counsel to handle these technical details.

"Q. Please tell us what you recall about the arrangements between General Motors and the Opels. * * * A. I remember that in essence it was considered useful mutually between Geheimrat von Opel and the General Motors group for the Opel group to retain some interest in the Opel Company. Part of the story on that was that—

"Q. Suppose you go back to the purchase of the Opel Works by General Motors. Do you mean at the time of that purchase it was considered desirable that the Opels
2385 retain some interest? A. Yes, that is the point.

"Q. In what year was that purchase? A. That was in 1929.

"Q. Go ahead. A. We wanted part of the Opel group, particularly Geheimrat himself, to give us a hand in the general administration, and what you might call the very general management of the property; and it was thought advisable from the General Motors standpoint to retain and have retained some Opel interest in the property because, naturally, if they held on to some of the stock in the company, they would have an incentive for working with the American management.

"Q. Was an arrangement therefore made with Geheimrat whereby he continued to hold some of his stock after the sale in 1929 to General Motors? A. Yes, sir.

"Q. Did you learn something during 1931 that Geheimrat Wilhelm von Opel was considering selling out the balance of his stock to General Motors? A. Yes, sir.

"Q. Do you recall how you learned that? A. In discussions with Geheimrat, he told me that he was considering it, and I made a plea to him to retain his interest.
2386 We had a very frank discussion about the thing between the two of us. He wanted me to tell him whether I really meant what I said, that I wanted him to go along with the company and be chairman of it, and actually be what you might call the public head man in Germany. I told him very earnestly at the time that I was eager to retain him as chairman and retain his interest in the property."

Mr. Baum: I skip now to the middle of page 10:

"Q. Could you give us as nearly as you can the date of these discussions with Wilhelm von Opel? A. There is where my memory is a bit vague, my recollection of it at the moment. I suppose if I refreshed my memory and took a chronology of my trips and made studious efforts—you know how you stimulate your memory by putting different pieces in—then I could tell you. It was, roughly, out of my vague recollection, two or three years after we got under way, perhaps a couple of years after we sort of got under way with the arrangements, trying to operate the company in harmony with the Opel people, starting with Geheimrat.

"Q. You do recall the date? A. No, I do not.

"Q. For the purpose of refreshing your recollection, I show you now a photostat of a memorandum dated
2387 October 22, 1931, from A. P. Sloan, Jr., to Donaldson Brown—you have seen that?

"Mr. Gallagher: We have seen it.

"Q. Will you please read that, Mr. Mooney?

"(Witness does.)

"Q. Have you read that, Mr. Mooney (Defendant's Exhibit B)? A. Yes, sir.

"Q. Does that memorandum refresh your recollection as to the date of these conversations with Wilhelm von Opel? * * * A. It does not refresh my memory about the dates. It refreshes my memory about the general principle that I was interested in at the time, of keeping Geheimrat interested in going along as chairman of the property.

"Q. Will you tell us what you can recall concerning your negotiations or discussions with Mr. Wilhelm von Opel concerning his retaining his stock for a while longer? * * * A. My peculiar responsibility in General Motors for the various properties overseas was particularly in the field of getting them managed, which, in turn, meant providing management personnel for the various properties, and this included, of course, the German property, Adam Opel A. G.

2388 Geheimrat von Opel had been concerned for some years with the management of the property, was intimately concerned with all the details of operating it, knew the motor car business very well and generally had a type of personality that you look for in the management field. We had undertaken the problem of managing Opel with the approach that he would provide American technical know-how and skilled technical personnel; but that over in the fields that particularly related to German public relations, relations with dealers, etc., we would retain as many of the German executives as possible, so that we would get the advantage of the combination of knowledge and experience in Germany with technical knowledge of how to design and build cars and trucks. Geheimrat was a very important person on the German side of the management, so I was eager to retain him as part of the management; and so, therefore, when he began discussing with me the idea of selling the rest of his stock, I tried earnestly to discourage him from selling out.

"Q. With this memorandum of Sloan's before you, and with your recollection refreshed by it, can you state whether it was in October, 1931, that you discussed with Mr. Wilhelm von Opel an arrangement whereby he might retain his shares for a longer period of time? A. I cannot remember that exact date. I think it is seventeen years ago and I don't think I would be honest if I said I could
2389 remember the exact date at that time. I can remember the substance and principles of things we were striving for, but I just have not got that kind of memory; so therefore I cannot say, I cannot identify, any exact dates. If it were useful, those dates could be nailed down; if they are in controversy and there are two sides to the story, you can certainly get those nailed down. A little research upon my travels would settle that."

Mr. Baum: Skipping now, to the question toward the bottom of the page:

"Q. Do you recall whether you reported to Mr. Sloan your conversations with Mr. Wilhelm von Opel about his retaining his stock for a while longer? I am not asking you for your general practice on reporting to Mr. Sloan, but whether you recall reporting to him on this particular matter? A. There is where the memory thing comes in again. To remember a telephone conversation of some kind or something you did seventeen years ago; all I can say is that you have to exclude that. Quite obviously, if you are on the operating side of an industrial company, you report to the financial guys and lawyers, and let them carry on the rest of the day's work. You tell them what in principle you would like to get done, and they go along and do the best they can and mop up in back of you.
2390 "Q. I call your attention to the first paragraph of this document that has been marked as Defendant's Exhibit B, which states: * * *

"'I just want to put on record what Mr. Mooney told me over the telephone as to his recommendation with respect to the holdings of Dr. Wilhelm in Adam Opel A. G.'

"What I am asking you is whether you recall having such a telephone conversation? A. No, I do not.

"Q. Have you any reason to think that the statements in this memorandum, insofar as they refer to such a conversation with you, are inaccurate? A. I have no reason to believe—".

Mr. Gallagher: Just a moment. At that point I object. I thought we were going to cover that. This is one of the exhibits excluded from evidence, 55 and 56, definitely a hearsay memorandum prepared in America, not prepared abroad. As a matter of fact, I think it is completely irrelevant that we are going any further with the question on the statements appearing in the memorandum, when the memorandum has been excluded.

Mr. Baum: I agree, Your Honor; I will skip that. I will go to the top of page 15. I will read the answer after the objection there—the ninth line:

2391 "A. I recall that after my conversation with him at Russelsheim, he seemed to be quite convinced—and by this time our relations were of such a nature that we were quite frank with each other—he seemed to be quite convinced that I meant what I said when I told him that I wanted him to retain his position as chairman of the board and retain his financial interest in the company.

"Q. Do you remember whether Mr. Wilhelm von Opel made a definite proposal that he would retain his stock on certain conditions? * * * A. I remember he told me he would proceed on the course generally of retaining his stock. We did not have—at least I have no recollection of the specific conditions at the time."

Mr. Baum: Going to the top of page 16:

"Q. Do you recall whether Mr. Wilhelm von Opel stated that he would be willing to retain his stock if the obligation of General Motors to pay for it were changed from one to pay in marks to one to pay in dollars? * * * A. No, I do not.

"Q. I now show you a copy of a radiogram or telegram dated October 23, 1931, from Wilhelm von Opel to Mr. Sloan, at General Motors, New York City. This document consists of two pages and is marked Defendant's Ex-
2392 hibit D. Have you read that radiogram, Mr. Mooney?
A. Yes, sir.

"Q. Can you state whether this radiogram dealt with the negotiations which you have already described between you and Mr. Wilhelm von Opel, looking toward his retaining his stock?"

Mr. Gallagher: Will you please identify, Mr. Baum, that exhibit, now, with our new exhibits, so that the record is correct on it?

Mr. Baum: I believe that is Defendant's Exhibit 6 at present.

Mr. Gallagher: All right.

Mr. Baum: Page 16:

"A. Yes, it fits in with it.

"Q. With your recollection refreshed by that radiogram, can you now recall whether Mr. Wilhelm von Opel proposed to retain part of his stock if he were guaranteed payment in gold instead of marks? * * * A. I can remember that he proposed to retain part of his stock; but the technical details about what the foundation should be on them, whether gold or marks, I cannot remember.

"Q. Do you know what was the result of these negotiations between Wilhelm von Opel and General Motors about

Mr. von Opel's retaining some or all of his
2393 stock? * * ? A. I can remember that it went into some kind of confusion and misunderstanding between Germany and New York somewhere. Just how that got cleared up or what happened, I can't remember.

"Q. Do you know whether any arrangement was ever made between General Motors and Geheimrat whereby he did retain his stock? * * * A. I can't remember that positively, no.

"Q. Do you know whether at that time Geheimrat went ahead with his intention to sell his stock to General Motors? * * * A. I can't remember."

Mr. Baum: Skipping, now, to the top of page 18:

"Q. Do you mean your testimony to be, Mr. Mooney, that you are unable at the present time to recall whether these negotiations with Mr. Wilhelm von Opel resulted in his retaining his stock, or whether he went ahead and sold it? A. Yes, that is what I mean. * * *

"Q. During your discussions with Mr. Wilhelm von Opel about his retaining stock in Adam Opel A. G., were you ever told by him that he no longer owned any stock in Adam Opel A. G.? * * * A. No, I was not.

"Q. Were you ever told by anyone else at the time
2394 of those negotiations that Mr. Wilhelm von Opel no longer owned the stock? * * * A. I don't remember that.

"Q. Do you remember whether you were ever told at the time of these discussions with Mr. Wilhelm von Opel about his retaining stock in Adam Opel A. G. that he no longer owned any stock? * * * A. No, sir.

"Q. Do you mean, Mr. Mooney, that you were not so told? I am not clear how you meant to answer the question. A. The only thing I can remember— * * *

"A. —about that, I had general reasons to presume he was still chairman of the company, in conformance with the general understanding that we had had. * * *

"Q. At the time you were discussing with Mr. Wilhelm von Opel his retaining stock in Adam Opel A. G., was it your understanding he owned the stock you were discussing? * * * A. Yes, sir.

"Q. And at the time of these discussions, were you ever told by Wilhelm von Opel that he had made a gift of his stock in Adam Opel A. G. to his son Fritz? * * * A. No, I was not.

"Q. When did you first hear of such a gift? * * * A. Never heard of it.

2395 "Q. At the time of these negotiations with Mr. Wilhelm von Opel about his retaining stock in Adam Opel A. G., did you ever receive any proposal that Mr. Fritz von Opel hold shares of stock in Adam Opel A. G.? * * * A. No, sir.

"Q. If the proposal to retain shares of stock in Adam Opel A. G. had been made in behalf of Fritz von Opel, rather than by Wilhelm von Opel, would you have favored the acceptance of the proposal? * * * A. No, sir.

"Q. Will you please give us the reasons for your answer? * * *

"Q. Will you please tell us why you would not have been interested in the proposition that Mr. Fritz von Opel retain or hold stock in Adam Opel A. G.? * * * A. Because Fritz had shown disinclination to be mixed up with the management of the company.

"Q. Had Mr. Fritz von Opel worked for General Motors Export Corporation? A. Yes, sir.

"Q. Do you recall in what capacity he had been employed by it? A. Not very clearly. As I recollect it he was employed over at General Motors Continental S. A., Antwerp, Belgium, for a while.

2396 "Q. What type of plant was the plant in Antwerp? A. An assembly plant.

"Q. Do you recall what Mr. Fritz von Opel's duties and responsibilities at that plant were? A. No, I do not."

Mr. Baum: That concludes the direct examination, Your Honor.

(The questions on cross-examination were read by Mr. Gallagher, and the answers were read by Mr. Boland.)

Mr. Gallagher: This is the cross-examination by Mr. Gallagher:

"Q. Mr. Mooney, are you familiar with the fact that this week General Motors took over control again of the Adam Opel A. G. Plant of Germany? A. I saw it in the newspaper a couple of days ago, yes. * * *

"Q. Subsequent to April of 1929, when General Motors assumed control of the Adam Opel A. G. Works in Germany, did you go to Germany very often to visit those facilities? A. Well, yes, I did; I went rather often.

"Q. You stated that Geheimrat von Opel and you became quite frank after a period of time; on how many occasions did you see him in Germany during the first two or three years of G. M. operation of those facilities?
2397 A. Oh, perhaps an average of a few days every three months.

"Q. How did you address him? A. Geheimrat.

"Q. You did not call him Bill or William? A. No, sir.

"Q. You have previously stated in your testimony that he made no statement to you about any gift to Fritz. Did he ever make any statement to you about any gift to his daughter? A. No, sir.

"Q. Did he ever discuss with you the settlement he made on his daughter at the time of her marriage? A. No, sir.

"Q. Did he ever discuss with you how he had invested his wealth? A. No, sir.

"Q. Did he ever discuss with you the contents of his will? A. No, sir.

"Q. Mr. von Opel was considerably older than you, was he not, Mr. Mooney? A. Yes, I think he was about ten years older.

"Q. How did he address you, by what salutation? A. Mr. Mooney.

2398 "Q. In 1929 when General Motors determined to acquire the Opel Works, did you make that decision for the General Motors Corporation? A. No, I made it as part of the group that visited Germany at that time.

"Q. Who was the deciding factor in the purchase? A. The group.

"Q. You were one of the group? A. Yes, sir.

"Q. How large a group was that, Mr. Mooney? A. About five, as I recollect.

"Q. Who else were in that group? A. Donaldson Brown.

"Q. Donaldson Brown, Financial Adviser of General Motors? A. Yes, chairman of the Finance Committee.

"Q. John Thomas Smith was General Counsel? A. Yes, sir.

"Q. Who else, Mr. Mooney? A. Albert Bradley.

"Q. What was his position? A. Vice-President in Charge of Finances.

"Q. Anybody else? A. I think Fred Fisher was in on part of it.

"Q. What was his position with General Motors?

2399 A. Vice-President and member of the Board and Executive Committee.

"Q. Was there anybody else, to your recollection? A. Myself, of course.

"Q. And yourself? A. Yes, sir.

"Q. Was Mr. Sloan a member of that group? A. No, sir.

"Q. He was not? A. No, sir.

"Q. Did he participate in the determination to acquire these works? A. Yes, he did.

"Q. Subsequent to or contemporaneous with the time you gentlemen— A. Contemporaneously.

"Q. Did you make that determination here in the States or in Germany? A. Germany.

"Q. Where was Mr. Sloan at that time? A. New York.

"Q. Did your group submit the proposition to him? A. Yes, sir.

"Q. Did you have to await his approval? A. Those things were decided as part of the group. He did not
2400 take any positive position. We decided as a group those matters that were of mutual interest to him.

"Q. If he had objected would the deal have fallen through? A. Not necessarily.

"Q. Geheimrat von Opel knew Mr. Sloan personally, did he not? A. Yes, sir.

"Q. He also knew Mr. Donaldson Brown? A. Yes, sir.

"Q. He knew you, of course? A. Yes, sir.

"Q. He knew Mr. John Thomas Smith? A. Yes, sir.

"Q. Did he know any of these other gentlemen you mentioned—Mr. Bradley? A. Yes, sir.

"Q. In other words, is it true that he knew all of the top level men in General Motors? A. Yes, sir.

"Q. As a matter of fact, those were the men with whom he dealt when he entered into the escrow agreement with General Motors; is that not correct? A. Yes, sir.

"Q. And it is a further fact, is it not, that the
2401 escrow agreement was entered into between Wilhelm von Opel and General Motors Corporation, not General Motors Export Subdivision; is that correct? A. That is right.

"Q. Getting down to the latter part of 1931, specifically, between the date October 17, which is just prior to the date appearing on Defendant's Exhibit B which defendant's counsel showed you, which is the Donaldson Brown memorandum; just prior to that time and for a period

of the next three or four weeks, when was it during that period that you first learned that a call had been made on General Motors for them to purchase the remaining Opel shares? A. I don't remember when a call was made.

"Q. Defendant's Exhibit B, dated October 22, reflects a telephone conversation which you had with Mr. Sloan. Do you recollect where you made that telephone call from? A. No, I do not.

"Q. Do you have any recollection whether or not at that time you were in Germany? A. No, I have not.

"Q. Do you recollect at the time that these conversations which you have mentioned, with respect to Wilhelm von Opel retaining his interest in the Opel Works;
2402 whether or not John Thomas Smith came to Germany to participate in those discussions with you? A. I have a vague recollection of his being there shortly after I had had one of the conversations.

"Q. You at this time, if I understand you correctly, have no specific recollection of any details that transpired at that time; only a general recollection that discussions were had with Geheimrat von Opel looking toward his retaining a stock interest in Opel; is that correct? A. Yes, that is right.

"Q. Do you recollect how many times you talked to him at this time about this situation? A. Well, several.

"Q. Do you recollect that at this time Fritz von Opel also came to Germany? A. No, sir.

"Q. Do you have any recollection of the fact that Fritz von Opel had served prior to this time a notice on General Motors calling on them to purchase the Opel shares? A. No, I have not.

"Q. When you had your conversations with Wilhelm, then, do I understand you correctly you had no knowledge of the fact that a call had already been made on General Motors to purchase these 600 shares? A.
2403 I have no recollection of it; you use 'knowledge'; I say 'recollection.'

"Q. Am I correct in saying, Mr. Mooney, that you were in favor of Wilhelm von Opel retaining what you thought his interest to be in Opel? A. Yes, sir.

"Q. Am I also correct in stating that from your knowledge, John Thomas Smith, Alfred Sloan, Mr. Bradley, Mr. Donaldson Brown and all the other gentlemen whom you have mentioned as part of this group, were interested in having Wilhelm von Opel retain what you thought his interest to be in the Opel Works? A. They left it to me to operate these properties, and, in turn, provide largely the management personnel for them; so that when I took the position that I wanted to have Geheimrat retained in the management as chairman, they went along with that.

"Q. Do you recollect that John Thomas Smith—you said you turned these matters over to the lawyers—do you recollect that John Thomas Smith was also interested, as you were, in having Wilhelm retain what you thought his interest was? A. That is right.

"Q. Do you recollect generally from your own recollection, as refreshed from the memoranda which de-
2404 fense counsel has shown you, Defendant's Exhibit B, that Donaldson Brown and Mr. Sloan were likewise interested in having Opel retain what you thought his interest to be? A. Yes, that is right.

"Q. By the way, Mr. Evans was manager of the Opel Works, was he not? A. Yes, sir.

"Q. He was likewise interested in having Wilhelm von Opel retain what you thought his interest to be in Opel? A. Yes, sir.

"Q. Do you recall Mr. Wronker-Flatow? A. Yes, sir.

"Q. Mr. Flatow was counsel for that subdivision of General Motors Export; is that correct? A. He was for a while. I am a little vague about that. * * *

"Q. Pertaining to the Opel German properties? A. He was counsel for a while, and then took an executive job down at Opel. I am a little vague about that.

"Q. He was also interested in behalf of General Motors

in having Mr. Opel retain what you thought his interest to be? A. He never discussed the thing with me
2405 and I never asked him whether he was:

"Q. You did not ask Mr. Flatow his ideas? A. No, sir.

"Q. These other gentlemen were interested, as you were, in Mr. Opel retaining what you thought his interest to be? A. That is right.

"Q. At that time, if I understand you correctly, Mr. Wilhelm von Opel indicated to you he was interested in retaining what you thought his interest to be, is that correct? A. He was willing to retain his interest as part of the business of retaining the job of chairman, and going along to give us a hand to operate the company.

"Q. And retaining this stock interest that you discussed? A. That is right.

"Q. But in spite of the unanimity of desire on the part of all you gentlemen, the interest was not retained; is that correct? A. That is the thing I don't recall, whether it was retained or not.

"Q. You know that the Opels did not have any interest in the Opel Plant subsequent to 1931, do you not,
2406 Mr. Mooney? A. I would have to take your say on that. I really don't recall that now. I have sort of lost track of that.

"Q. You never saw the records of General Motors to disclose whether or not they finally, after the fall of 1931— A. I suppose I did at the time. At the time, as I say, I knew all about these things; but now, seventeen years ago, I could not say, 'Well, they did this or that.' I just can't recollect.

"Q. Do you not recollect that Fritz von Opel was opposed to retaining an interest in the Opel Works? A. I don't know that.

"Q. Just to clarify a few other things, Mr. Mooney; you stated that Fritz von Opel worked for General Motors Export Continental S. A., at Antwerp: Is it not a fact

that while Mr. von Opel was making a study of methods of production and operation, he was not an employee of General Motors Export? A. I don't remember.

"Q. Is it not a fact he never drew any salary from General Motors Export? A. I don't know. He passed out of my sort of horizon or area of visibility.

"Q. You have no recollection? A. Not only no
2407 recollection, but I did not know at the time what he was doing; and it did not make any difference to me."

"Q. When you say employed, you are not certain he was employed, as we use the term usually; he was around the property, but whether on the payroll you could not state at this time? A. No, I just don't know; did not know at the time."

Mr. Gallagher: Going over to page 31:

"Q. Have you stated previously, or does the memorandum which you prepared with respect to the dates of your association with General Motors reflect when you left Germany? A. No, sir.

"Q. Do you recollect when you left Germany? A. I was in and out.

"Q. I mean when you left prior to the war. Was it 1939, 1940 or 1941? When did you sever your connection? A. (Witness refers to memorandum.) Yes, in 1940, it says here. Have you looked at this at all?

"Q. Just briefly. Do you remember independently of that memorandum whether or not you left in 1940, or was it 1941? A. I was in Germany the last time in the spring of 1940.

2408 "Mr. Gallagher: That is all, Mr. Mooney. Thank you."

Mr. Burling: If Your Honor please, there are two pending arguments—two motions to strike. One concerns the

Giulini document, and one concerns Defendant's Exhibit 30. I would respectfully suggest that we discuss the latter one now, because the memorandum directly relates to the subject matter of the Mooney deposition. There was a motion made to strike this document.

Mr. Gallagher: Will you identify to the Court Defendant's Exhibit 30, which is the letter to Wronker-Flatow from Mr. Smith we claim is misleading?

Mr. Burling: The motion to strike as made yesterday—I myself did not take the deposition; I was not in the matter then—I left to Mr. Baum to argue. Since then Your Honor said we could speak further about it today. I find that Mr. Baum was correct: there was an additional reference.

Mr. Gallagher: I thought His Honor really ruled on this yesterday.

The Court: No; I will give him a chance to argue.

Mr. Gallagher: All right.

Mr. Burling: I submit that the motion to strike cannot be supported, on the ground that the plaintiff here made the following admission concerning this document:

2409 that on June 2, 1932, John Thomas Smith, General Counsel of General Motors Corporation, sent a letter to Mr. Wronker-Flatow in the regular course of business; that said letter was received by Manfred Wronker-Flatow; that at the time the said letter was sent a file carbon copy thereof was made by General Motors Corporation in the regular course of business; that it was the regular course of business of General Motors Corporation to make such file carbon copy; and that the exhibit attached hereto is a true and correct copy of said letter and of said file carbon copy.

I submit that under the Federal Shop-Book rule—and I am sure Your Honor is familiar with it. Would it be helpful to you if I read it?

The Court: I know the shop-book rule, but you may read it.

Mr. Burling: "In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event
2410 or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight but they shall not affect its admissibility. The term 'business' shall include business, profession, occupation, and calling of every kind."

Now, yesterday my friend, Mr. Gallagher, said the problem was the same as the problem of the other two General Motors documents. I submit that this letter shows on its face that that is not so. There is no multiple hearsay here. In this case, John Thomas Smith, in the regular course of his business as general counsel of General Motors, is advising Wronker-Flatow, as general counsel of Opel, what he, John Thomas Smith, had personal knowledge of—that is, what Wilhelm von Opel said to him and what Fritz von Opel said to him.

As I say, there is no multiple hearsay problem, as there was in the case of the other document, where Sloan was repeating to Brown what Smith had told him Mooney had said over the phone. I admit that that was multiple hearsay.

Mr. Gallagher: Have you finished?

Mr. Burling: So our argument is that this writing is a matter of the personal knowledge of John Thomas Smith of what admissions were made to him by Wilhelm and Fritz von Opel and, hence, within the scope of the statute.
2411 The Court: Let me see that Federal statute which you have there.

2412 You see, I make a distinction, Mr. Burling, between what is referred to here as a writing in the form of an entry, whether in a book or a memorandum, or an act and a writing which recites a conversation with another party. This letter indicates an act on the part of the General Motors Corporation, of which this man is an agent, so that any act that he took might be admissible if that act is material; but I do not think that a memorandum of a conversation you had with another party, even if it is written, comes within this. The conversation itself would not be admissible unless it was an admission—

Mr. Burling: That is exactly my point. I agree. If Smith was recording what Jones told him Brown told him Fritz von Opel said, I think I would have to agree. I say there is no hearsay here except as to Smith.

The Court: Isn't that enough?

Mr. Burling: No, if Your Honor please. The shop-book rule has always been recognized.

The Court: The shop-book rule is here. The shop book is a memorandum of a transaction which is written into the shop book. Now, this statute extends it to a memorandum of an act or an event, not the substance of a conversation. If you record an act of the corporation, just like you do in the shop book, so and so was shipped that day, or such and such an act was done, and they

2413 record it, any writing of that would be evidence of that; but a conversation that this man heard von Opel telling him—

Mr. Gallagher: Your Honor—

The Court: Just a minute, I will call on you if I need help. According to Geheimrat, "He never received my cable," and so forth. "This time Fritz is violently opposed." That is not an act of this company or of this man in the regular course of business.

Mr. Burling: It is a report of admissions made to Gen-

eral Motors representatives by he von Opels, who are the real parties in interest in this litigation. The Office of Alien Property has proven almost all its cases by documents of this sort. Many other cases, of considerably larger sums, are coming up involving this same problem. We have done enormous work on it.

The Court: Yes; I can understand.

Mr. Burling: Before Your Honor rules, I will ask leave to submit a memorandum.

The Court: I will be glad to consider it. The point I have in mind is this. I am perfectly familiar with the fact that you can lay the foundation to contradict Wronker-Flatow—Stansfield—by anything in this memorandum which brought to his attention a fact which he either acquiesced in or confirmed by a replying letter, or
2414 if he was challenged to make a statement and he did not, it might be an admission on his part. I am familiar with that approach.

The thing that concerns me is, where we have a letter which contains a statement as to what the attitude of another person was—coming right here, the attitude of Fritz violently opposing—whether that recital of the feeling of a certain individual is an act or an event or a transaction or occurrence within the meaning of this statute. There may be some cases on that, on this very statute. I will be glad to consider them if you produce them.

Now, a statement of a person made to him is not the thing that ordinarily is an event within the terms of that.

Mr. Burling: We have many cases that we say do say that. May I say this? Will Your Honor reserve the ruling until final argument in this case and give us a chance to prepare a memorandum on it, which we will submit?

The Court: Yes, I am perfectly willing to do that. The importance of my decision here is whether I rely upon it in the final analysis or not.

Mr. Burling: To be quite frank, Your Honor, my concern with this is equally with the precedent value of this. I have personal knowledge of cases involving hundreds of millions of dollars.

2415 The Court: Yes. I will tell you my misgiving about it. Of course, this is a letter from an outside party. It is a letter from the general counsel of the General Motors. That is who it is?

Mr. Burling: Yes.

The Court: There is not any question about the authenticity in this case. I think you have established it.

Mr. Burling: It is admitted, and the regularity of the course—

The Court: A letter in the regular course of business. That reduces the question to the proposition whether this is a recordation or a memorandum in writing of an act, transaction, occurrence, or event in the regular course of business and it was the course of business to make such memorandum.

What I am having my trouble with is whether it would be the custom of a business to make a memorandum of a conversation. We know it is customary to make a memorandum of an act, such as a shipment, or such as what the price is. That is oftentimes told. That is the shop-book entry. It is the contemporaneous writing down of an event which is a part of the business.

Now, is it the custom, in a business of this sort, to make a memorandum or record at the time of the act,

2416 or within a reasonable time thereafter, of a conversation? That is apparently what this is. I have not read this carefully enough to see whether there are any acts in that.

Mr. Burling: May I state what my position is?

The Court: Yes. Tell me what you are trying to prove on it.

Mr. Burling: On the question of admissibility, we say that where negotiations are carried on by Geheimrat von

Opel in 1932 to reacquire the Opel shares from General Motors, those negotiations looking toward a transfer of stock are transactions within the purview of the statute.

The Court: Yes, that would be. This is a recordation of the transactions.

Mr. Burling: I believe, if Your Honor please, that the statute was passed for the precise purpose of getting away from the narrow rule that only things kept in shop books, in technical books, could be kept, but that writings kept in the regular course of business—

The Court: Your shop books, as a rule, did not record conversations. He says, "Fritz was very violently opposed to his father's proposition; in fact, this opposition was one of the reasons why he wanted to return to lay them before his father in person."

2417 I would like very much to be enlightened on it.

Mr. Gallagher: Your Honor, I have the decisions here, and this has been determined in this circuit by 147 Fed. (2d).

The Court: Here is my situation with regard to all of these items. You gentlemen know the rule, I am sure, in equity in these non-jury cases. The important proposition is what I consider in the final analysis. It is not whether I admit it and then strike it. That is not so important. The question is whether I consider it ultimately.

I am perfectly willing, in view of the importance of this as a precedent in other cases, to permit him to submit his authorities at the time of the hearing and, you, of course, submit yours. What I am doing now is to tell him the difficulties I am having and see if he can find anything on it.

I have not had any trouble on the writing. In the course of business, if a man would make a writing of this sort recording an event, I have not any trouble with the fact at all that it is shop book.

The only thing I have trouble with is whether that writing is entitled to recite impressions of one member of the company as to the attitude of a person, a recital of what

was said to him at different times. If the cases are
2418 with you on that, of course, I will admit it. I am perfectly willing to reserve decision on that. That to some extent might apply to some of these other cases.

Mr. Burling: We will direct our attention to that point, Your Honor.

The Court: All right.

Now, let me ask you this, Mr. Gallagher, on these other points. These are things that occur to me. Maybe they would dispose of them; I do not know.

Mr. Burling has granted that his experts say they cannot tell about these signatures by way of comparison. If they cannot tell about these signatures by way of comparison, I wonder if I can. That is the question I was going to ask you. Ordinarily, you can have an admitted handwriting in evidence and compare it with others. You have an anamolous situation here—an expert cannot say that they are the same.

Mr. Gallagher: Might I say, Your Honor, I submit that the question of the authenticity of the signatures, even if their experts could have proven them, would not have aided—

The Court: I have got to hurdle that one first. That is the first thing I have got to get over.

Mr. Burling: If Your Honor please, three of the documents are not subject to this vice, because the
2419 signatures are identified unquestionably, without qualification, by von Opel; that is, 90, 98, and 97. I have the record references handy.

The Court: Well, I will come to those a little later. Tell me what you think about these others on authenticity.

Mr. Burling: Our position is that where the letter appears to be signed by the officers of the company, where the letter has the stamp signature of the corporation, where it is on the corporate letterhead, a presumption that they are corporate documents arises—that is, that we have made a prima facie case—and the question would,

rather, be whether my friends would call experts to show that they were not.

The Court: I had not thought that that was the rule. I thought the burden was on the person who introduced them to prove them, not by stamps, but from someone in the organization.

Mr. Burling: I won't press that.

The Court: I think that is the rule.

Mr. Burling: Then I submit, if Your Honor please, if that is Your Honor's ruling on authenticity, I would agree that 99, 100, 101, 102, 103, and 104 cannot be established by us.

The Court: Well, that is my inclination, unless you
2420 show me something to the contrary.

Mr. Burling: Frankly, I have nothing on it.

The Court: I do not want to be quick on any of these points, but I do not want to have any gross error here by violating an obvious rule of evidence when challenged.

Mr. Burling: In order to simplify matters, I will withdraw my offer of 99 through 104.

(Defendant's Exhibits 99 through 104 were withdrawn.)

The Court: That leaves 90, 97, and 98?

Mr. Burling: Yes, if Your Honor please.

The Court: Mr. Gallagher, let me tell you a little bit my present impression on this. I am going to leave open the argument, for you on the one hand and Mr. Burling on the other, what a subsidiary does, a subsidiary being a separate corporation. I am going to leave open the argument whether you have to show affirmatively a continuendo of the business, within the knowledge of the principal corporation, after war starts. I will leave that open, because all you are asking me to rule on now is the question of leaving things in evidence for possible consideration.

I frankly do not know—once we have Uebersee Korpo-

ration, which owns all the stock of this Trans-
2421 danubia, as I understand; we find one of the officers of Uebersee before the war carrying on in the business of mining bauxite, and then there comes the war, and we have a circumstance (I know the limitations that you argue with regard to it) of protecting financial interests over there—whether the fact that this officer of Uebersee carried on business before the war would make it mandatory on him or his associates to issue a directive, if they had a directive, to the subsidiary to stop the business, or, if it challenged them, to take affirmative action, if they could, with regard to the subsidiary, or whether they could sit absolutely tight, as Dr. Meier said they did. I do not know the law on that, and I am going to leave it to you gentlemen to argue.

But let us assume that I should find, in accordance with Mr. Burling's argument, that there was a duty on the part of the owners of Uebersee, a neutral corporation, to absolutely order these subsidiaries to stop. Suppose I should say that. Wouldn't the fact that the subsidiaries carried on the relationships which would lead to doing business with an enemy be a material point, and wouldn't the fact of the writing of letters be a spontaneous act showing the doing of business?

Mr. Gallagher: These letters, which, we submit, are clearly inadmissible, would leave no inference to be
2422 drawn thereafter that we continued business. As a fact we do not whether Transdanubia did or did not.

The Court: Then, you are getting to the other point. He is trying to establish that Transdanubia did and that these letters—These are authenticated, aren't they?

Mr. Gallagher: No. These letters are the same letters out of Germany, not out of our files, as 99 or 104. They are out of the files of Giulini Brothers and they relate to a letter from them to Transdanubia—

Mr. Burling: May I read the record?

Mr. Gallagher: Yes.

Mr. Burling: At page 1371, with regard to Exhibit 97, I asked Fritz von Opel:

"Question: You recognize the signatures of Krausz and Timar, do you not?

"Answer: Yes, I do.

"Question: And they appear on the third page of this document?

"Answer: Yes."

Later, at 1378:

"Question: At any rate, you recognize the signature of Georg von Krausz, do you not?

"Answer: Yes.

"Question: And von Krausz had what position
2423 with Transdanubia?

"Answer: He was one of the managers jointly with Dr. Timar."

With respect to Exhibit 90, I asked the question:

"In any event, this document, 90-A, is signed by one of the managers of Transdanubia?

"Answer: Yes. That is signed by Dr. Timar."

The Court: That is authenticated. Were those before the war?

Mr. Gallagher: No, Your Honor. 98 is before the war, but 90 is not. 90 is February, 1942, 97 is March of 1940. 98 is October of 1940, when von Opel is in America here, and it is a record of a conference—complete hearsay—in which Giulini—

The Court: I do not have it here.

Mr. Gallagher: 98?

The Court: 97. Let us take them up in order. Let us see number 90.

We are talking about 90, 97, and 98; is that it?

Mr. Gallagher: That is right.

The Court: Now, here is number 90, which is a letter from Transdanubia to Giulini Brothers.

Who were Giulini Brothers?

Mr. Gallagher: They are a purchasing outfit in Germany.

The Court: Now, he says, "Referring to your letter
2424 of January 23, 1942, we wish to advise you as follows * * * The quantities established by you"—

That is a letter of doing business, isn't it?

Mr. Gallagher: It is a letter from Transdanubia—that is what it purports to be—out of the files of Giulini Brothers, but there has been no basis laid here that they were kept in the regular course of business, and we have not stipulated anything on this.

The Court: This is a little different. We have a letter here of a corporation, which has been identified as being signed by the president, and who else?

Mr. Gallagher: Well, von Opel says, "I guess it is."

The Court: What is the name?

Mr. Gallagher: At the top of page 1980, where Mr. Burling says:

"I show you Defendant's Exhibit 90-A, which you have previously identified as being the letterhead of Transdanubia"—earlier he had merely offered it for the letterhead purpose—"state, if you will, whether the signature on the right hand—there are two signatures—the right-hand signature is not that of Dr. Timar.

"Answer: Yes, I guess it is."

2425 The Court: That might go to the weight.

Mr. Burling: At 1381, after some more conversation, von Opel said unqualifiedly that it was. My question was:

"In any event, this document 90-A, is signed by one of the managers of Transdanubia?"

He said:

"Yes, that is signed by Dr. Timar."

The Court: Gentlemen, I do not have very much doubt about the admissibility of these. The effect of what I decide on them I am very much in doubt on. I will leave these in, over your objection, and save your point.

Mr. Gallagher: We save our objection.

The Court: I want to make it clear at this time that I am not ruling that the fact of the writing of these letters imposes the liability on Uebersee, the plaintiff here, of doing business with an enemy. I am leaving that entirely open for argument, but I am leaving these in as properly authenticated and as indicating that they show the fact that Transdanubia—whatever that fact is worth in this case—might have been doing business, or tending to show that it was doing business, with an enemy. In other words, if I had the question of Transdanubia before me, whether it was doing business with an enemy, I think this would be evidence of it.

2426 Now, as to Uebersee, I am not going to rule right now that I think that that has any relevancy to Uebersee's position, but I am going to leave that open for you to argue,

Mr. Gallagher: May I clarify, where Your Honor is ruling, that the record in no wise reflects and there has been no showing that these exhibits were kept in the regular course of business by Giulini Brothers, and they have not been identified by anybody from Giulini Brothers or Transdanubia, and Mr. Frick, from whom they were obtained, is still living and available in Germany.

The Court: I think the circumstance here that they have produced the files of Giulini and that the president of Uebersee, which is the sole stockholder, as I understand it, of this Transdanubia, identified the signatures and that it was the stamp of the corporation, and the very articles them-

selves indicate that it was the doing of business—it dealt with business matters—makes a prima facie case out.

Mr. Gallagher: May I correct Your Honor? You said the president of Uebersee. Mr. von Opel is not an officer of Uebersee, as I know Your Honor is aware of.

The Court: I cut out the "president"; a very prominent stockholder. I think that makes out a prima facie case of that.

2427 Now, what weight I am going to give to it, I have not the slightest idea. I am going to depend on that very largely. I would like for you to dwell on that pretty thoroughly in argument, because it might very well be that the separate entity situation, even of a subsidiary, would negative the claim of the Government. On the other hand, I have an entirely open mind on it. I just do not know the answer. So that I will leave that open for argument.

Have we finished everything now?

Mr. Gallagher: Now, Your Honor, I wish to recall Mr. von Opel in rebuttal, and then we have two questions of Dr. Kronstein, and I believe we will have concluded.

The Court: All right.

Thereupon—

FRITZ VON OPEL was called as a witness in rebuttal and, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gallagher:

Q. Mr. von Opel, there were some questions put by Mr. Burling. You were in the courtroom yesterday, were you not? A. Yes.

2428 Q. You heard Mr. Burling's cross examination of Dr. Meier? A. Yes.

Q. There were some questions asked by Mr. Burling and

put to Dr. Meier by Mr. Burling with respect to conversations with you with relations to exhibits which pertained to the so-called Swiss francs transaction in 1931. Did you hear those questions and answers? A. Yes, I did.

Q. And Dr. Meier stated that you had discussed it with him. I will ask you, Did you discuss those exhibits in German with Dr. Meier at my request? A. Yes, I did so.

Q. All right, that is all.

Now, in Mr. Burling's cross examination of Dr. Meier he asked him whether or not he knew that you, Fritz von Opel, had stated that the Tanganyika plantations were valued at $12,000. Did you ever make such a statement? A. No, I did not.

Q. What statement did you make before the Alien Enemy Board? A. I checked the entire record, and the only statement I could find is the following: I explained in detail how I acquired this plantation in Tanganyika Territory and said I am asked about its value in the books of
2429 Overseas, and I say it is valued at approximately 200,000 Swiss francs, or $40,000.

Mr. Burling: May I ask if counsel will fix the place in the record where this statement appears?

Mr. Gallagher: I am sorry. Counsel is not able to do it. Mr. von Opel checked the record, after you made that statement, himself personally.

Mr. Burling: I object to any testimony about what is in the record unless I be told the page number.

The Court: I won't take what was in the record; I will just take his answer. What is this?

Mr. Gallagher: Tanganyika plantation.

The Witness: It is called the Opel Estates.

The Court: How do you spell it?

Mr. Gallagher: T-a-n-g-a-n-y-i-k-a.

By Mr. Gallagher:

Q. Is that it? A. Yes.

Q. Mr. von Opel, Mr. Houghland, when he was on the stand, stated that he met you for the first time in 1934 in Paris. Is that correct? A. No, that is not correct.

Q. Mr. Houghland further stated that you came to Nashville for the first time in 1935, driving a Mercedes car.

2430 Is that correct? A. No, that is not correct. That is wrong by about two years.

Q. Will you state when you met Mr. Houghland for the first time? A. I am not definite whether I met him even before my first visit to Nashville, but I am absolutely sure that I was in Nashville, driving this Mercedes car, late in 1933.

Q. And that was the time when you met Mr. Houghland with the Mercedes? In 1933? A. Yes.

Q. Have you any way by which you have refreshed your recollection, so that you can state with assurance that you were driving the Mercedes in 1933? A. I definitely have. I had this car only for about six months. It was unsatisfactory and I returned it to the factory at the end of 1933, and I remember it vividly because in 1933 I participated in the International Air Races in Chicago at the World's Fair, and that is where I took the car, and I even had gotten—it was a present of my father to me, but I had negotiated it with the factory—Mercedes factory—and they had given me a rather large discount of 30 or 40 per cent when I promised them I would take it to America and show it at the World's Fair.

2431 Q. Did you have any motor difficulties with that car in 1933? A. Yes. I had to exchange the carburetor. I sent it to the factory and they shipped me another carburetor, which arrived in New York October 27, 1933.

Q. And if I told you that the Collector's Office in New York reflects that, on Form 5101, the entry number of the carburetor was 12830, import number, 140176—

Mr. Burling: I object to the testimony by counsel. If it is a document, it can be put in.

Mr. Gallagher: I am asking him, if I tell him. This is merely to lay the foundation for the—

Mr. Burling: I object to a long statement by counsel.

The Court: That is objectionable.

By Mr. Gallagher:

Q. Did you pay a duty on that carburetor on its importation into the United States in 1933? A. Yes; I paid a slight duty. If I remember correctly, less than five dollars—only a couple of dollars.

Q. Is it your testimony that you shipped that car back out of the United States in 1933? A. Yes. I took it out with an Italian steamer, either the Conte de Savoia or the Rex, to Cannes, France.

2432 Q. Did you ever bring any other car to America? A. No, I never did.

Q. Now, Mr. Houghland stated that you told him you had fooled the British at Gibraltar with respect to your Liechtensteinean citizenship. Did you ever make any such statement to Mr. Houghland? A. No, never. All I told him, when I was detained for a few days, that the Liechtenstein Government got in touch with the Swiss Legation, and I contacted my friends in England, and first I told him—I told him I was very nicely treated and only detained for three days.

Q. Did you ever tell Mr. Houghland that your father owned the stock of the Uebersee Finanz-Korporation? A. No, never.

Q. Did you hear Mr. Houghland state that he always resented the fact that you owned the majority control of Spur? A. Yes, I heard him state so, and I must say I was always aware of this fact.

Q. Were you aware of his resentment? A. Yes, definitely so—

Mr. Gallagher: Mark this.

(Letter was marked Plaintiff's Exhibit 178 for identification.)

A. (Continuing)—and as early as right after the be-
2433 ginning of my acquisition of Spur I was warned by Mr. Hoffacker against the loyalty of Mr. Houghland.

Mr. Burling: I object to this letter on the ground that this is clearly hearsay. It is a letter from Hoffacker to Mr. von Opel, telling him what Hoffacker thought Houghland's view as to John Cole was. It is hearsay.

Mr. Gallagher: I am not offering it for the truth of what Hoffacker stated, Your Honor. I am merely offering it as proof of the fact that he had been advised whether it was true or not; that he had been advised, as early as 1933, and the letter states: "Regarding our relationship with Mr. Houghland"—

Mr. Burling: Just a moment. What would the relevance be, if Your Honor please, of the fact that he was warned, assuming he was, unless Houghland in fact was disloyal?

Mr. Gallagher: Do you want me to state what our theory is on it?

Mr. Burling: I submit, if Your Honor please, that the test of when a letter is or is not hearsay is when there is some relevance to the fact, assuming that what he stated is not true. Now, this must be offered as to the truth of the matter or it is irrelevant.

Mr. Gallagher: We are merely offering it as proof
2434 of the primary fact that he was advised to beware. We are not offering it as proof of the ultimate fact.

The Court: He was advised and what?

Mr. Gallagher: And thereafter we suggest that the inference can be well drawn that, having had that picture constantly before him, and knowing that Houghland resented him, it shows, in our opinion, how ridiculous is the statement that he stated on the transchannel call, "My father owns this stock."

The Court: In other words, you want to establish that it is unlikely that he could have made admissions to him if he was hostile to him?

Mr. Gallagher: Our whole proof has been to anybody, but particularly to this man, who he has known at all times resents his ownership and as to whom he has been warned by others; that it would be very unlikely, on a transchannel call, with the Gestapo listening on in England, and then later on in a trans-Atlantic call—neither of which have been corroborated—that von Opel is going to say, "My father owns this stock," when he knows it is going to cause his throat to be cut.

The Court: For that limited purpose, I think it will be admitted to show his hostility. There is only one thing. I do not know whether it rebuts Mr. Houghland or not. He admitted that, didn't he?

2435 Mr. Gallagher: He admitted that he personally resented von Opel, but he did not admit that he knew that von Opel knew how much he resented him. That is the difference.

The Court: You want to show the intensity of it?

Mr. Gallagher: No. I say this: that it is quite apparent—

The Court: What I am getting at is that Mr. Houghland admitted, as I remember it, right along that he was very much opposed to the Germans owning any interest in his outfit.

Mr. Gallagher: That is true.

The Court: And that he would like to have divested them at any time whatever, and he felt that way all along; but, having admitted it, do we prove it here on rebuttal?

Mr. Gallagher: I believe so, Your Honor. I submit that the fact that he personally, in his mind and heart, always resents von Opel and the Germans being in there does not mean that—unless von Opel sensed it or someone told him that to be a fact—von Opel would think he was anything other than a very grateful employee who was getting $90,000 a year from him.

The Court: You want to bring the fact home to him. All right.

By Mr. Gallagher:

2436 Q. I show you Plaintiff's Exhibit 178, a letter dated August 22, 1933, addressed to Mr. Fritz von Opel, addressed to 56 Pine Street, New York City, and signed—I can't read the signature—dated on the letterhead of Theodore Hoffacker & Company, and ask you if you can identify that letter (handing a document to the witness)? A. Yes; it is a letter from Mr. Hoffacker.

Q. You received this letter? A. Yes.

Mr. Gallagher: I now offer this Plaintiff's 178 and would merely like to read the second paragraph and call it to your attention.

(Plaintiff's Exhibit 178 for identification was received in evidence.)

Mr. Gallagher (reading): "Regarding our relationship with Mr. Houghland, would see that it appears greatly improved; still I cannot really say that Mr. Houghland's loyalty is all it should be. He seems to harbor within him a grudge against John Cole and apparently does not like to be watched too closely. As you know, I placed our own man in the company as assistant treasurer, and Mr. Houghland appears not to be any too friendly with him. Under all circumstances, we must be prepared to meet any issue precipitated by him. I have not been in Nashville since
2437 last fall. However, it is advisable that you and I go there during your present sojourn in the United States."

By Mr. Gallagher:

Q. You heard Mr. Houghland testify with respect to the fact that you had called him from somewhere in Germany,

at Cologne, transchannel, the latter part of August, 1939, and that the following day he called back and talked again and at that time stated that he called the operator again to find out how to get you. Did you have any telephone calls from Germany with Mr. Houghland in the latter part of August, 1939? A. Definitely not, because at this time I was not even in Germany. I was in Switzerland.

Q. Do you know when you arrived in Switzerland? A. I arrived in Switzerland August 17, 1939.

Mr. Gallagher: Mark this.

(Document was marked Plaintiff's Exhibit 179 for identification.)

The Witness: I found this fact in the books of Overseas, where certain telephone bills and certain hotel bills are booked.

Mr. Burling: I object to these, Your Honor, on the ground of authenticity. There is no showing at all.

Mr. Gallagher: I do not intend to offer them. I am merely going to show them to him for the purpose of refreshing his recollection.

2438

By Mr. Gallagher:

Q. I show you Plaintiff's Exhibit 179 for identification and ask you if that refreshes your recollection as to when you returned to Switzerland in the summer of 1939 (handing a document to the witness). A. Yes; on August 17, 1939.

Q. On August 17. What is it you are refreshing your recollection from?

Mr. Burling: I object to that. In the first place, I object to any further refreshing of his recollection. The witness

testified first that he arrived the 17th, and was then asked to refresh his recollection.

Mr. Gallagher: I will strike it, Mr. Burling, and withdraw the question.

The Court: I think I had better rule that that is not the proper means of refreshing his recollection.

By Mr. Gallagher:

Q. Have you refreshed your recollection from the books of the Uebersee Finanz-Korporation which are in evidence? A. Yes, certainly I did. I found in the Overseas book the entry of a hotel bill of $1563, and I knew that that was a hotel bill for quite a considerable time; and, furthermore,

2439 I remember that there was an international automobile race in Bern, and that I arrived in Switzerland three days ahead of this race; and I checked in the newspapers in the Library of Congress that this race took place on August 20, but, to make sure, I asked the hotel to identify copies of bills which were shown in the Overseas books, and that is a copy of the original bill.

Mr. Burling: I move to strike any testimony about what any piece of paper purports to be.

Mr. Gallagher: I have no objection to your motion being granted.

The Court: I sustain the motion.

By Mr. Gallagher:

Q. So it is your testimony, then, that during the latter part of August, a few days before the Normandy sailed for the United States, you did not have any transchannel telephone call with Mr. Houghland from Germany? A. Definitely not.

Q. By the way, in 1935, at the time you endeavored to establish a niessbrauch—that is, at the time of the gold litigation—what assets were there in the Uebersee Finanz-

Korporation? A. Overseas owned at this time this gold valued at about 6.4 million Swiss francs, and I held the claim to this amount against Overseas, so if you speak about assets, the net assets were the capital of Overseas.

2440 Q. And what was that capital, approximately? A. At this time I think either 250,000 francs or 500,000 francs.

Q. Excepting the gold, where were the remaining two and a half-odd million dollars which you had acquired from the sale of your Opel shares? A. They were kept by myself either in my name or in the name of Consortium O or Frima.

Q. Until when? A. Until the waiver took place.

Mr. Burling: If Your Honor please, may I ask that there be a clarification as to where the remaining two and a half million dollars were? It has been stated by the witness they were on Consortium O or in his own name. I would like to know where they were.

By Mr. Gallagher:

Q. Would you make a clearer explanation to the Court, Mr. von Opel, as to where those other two and a half million dollars were in 1935 before you put it into Uebersee? Where was it? A. In 1935, in the first part of this year, they were kept by Overseas—pardon me; by Frima, and either at the end of 1935 or in the beginning of 1936 they were sold by Frima to Overseas.

Mr. Gallagher: Is that satisfactory, Mr. Burling?

2441 Mr. Burling: Yes.

By Mr. Gallagher:

Q. Now, just to check a few other places in this record here, at page 1918 of the record, Mr. Crittenden, on direct

examination, was stating that, after a dinner with you in Germany, he asked what your relationship was to Hoffacker and who owned the funds and how you were operating, and the record states:

"Now, to give you a very general description, he told me that he was entrusted with the use of a considerable amount of money by his father under what he described as a usufruct contract and, in a general way, he had the handling of the funds and accounted back to his father; and also at that time related that he had a cousin, whose name I do not recall, who was operating under a similar usufruct contract with funds entrusted to the cousin by Fritz von Opel's uncle."

Did you ever make any such statement to Mr. Crittenden? A. No; definitely not.

Q. As a matter of fact, to your knowledge, did you ever have a cousin who had any kind of a contract with a usufruct provision related therein? A. No, I never have.

2442 Q. Now, at page 1938 of the record Mr. Crittenden stated as follows. He was talking about going to Hungary in connection with bauxite, and the question put, at the bottom of 1937, was:

"Did you have any further conversations with him as to this aluminum property in Hungary?

"Answer: Oh, yes; both him and Dr. Frankenberg. There was a general discussion—going back to Europe, and I was going to take a walking tour with the Doctor, and Fritz was going to drive me to Hungary.

"Question: To Hungary?

"Answer: Yes.

"Question: For what purpose?

"Answer: To show these ore mines. He told me they shipped quite a lot of ore to Germany, they did not get money for it and his father did not like it very much."

Now, let us take that in three sections. First, is his statement correct when he states, "He told me they shipped quite a lot of ore to Germany"? A. That is not correct.

Q. How much ore had ever been shipped to Germany at this time Mr. Crittenden is talking about, which is 1937? A.

2443 At this time the only sales which ever had been made were a thousand tons—approximate a thousand tons—sold to Hungarian Bauxite Trust in, I think it was, 1936.

Q. All right. Now, I might ask you, up until the time that you cabled Transdanubia in May of 1941, suggesting that they accept the Hadik's offer and lease the mines, to your knowledge how much ore had been mined out of the Transdanubia properties? A. In addition to those approximate 1,000 tons I just mentioned which were sold to the Bauxite Trust and paid for in cash on delivery, less than a thousand tons were sold to Giulini.

Q. So the total production, if I understand you correctly, from the Transdanubia properties up until May of 1941, to the best of your knowledge, was slightly less than 2,000 tons of ore? A. Yes, sir.

Q. How much was that ore worth? What did it sell for in dollars? A. You want dollars?

Q. Yes. A. If you take the highest rate of exchange, which is not correct today, but for argument's sake we can take it, it is about six or seven thousand dollars.

Q. Let us get to the second portion of Mr. Crittenden's answer, "they did not get money for it." Did

2444 you get paid for the ore you sold to the Hungarian Bauxite? A. Certainly. There were never any sales made without cash paid prior to delivery.

Q. Let us get to the third part of the answer, and he says, "and his father"—meaning your father—"did not like it very much." Did your father ever indicate his approval or disapproval? A. He did not even know of this affair.

Q. By the way, did you ever receive any money for these 2,000 tons of ore which you stated were mined? Did you

personally ever receive any money out of that? A. No. That all went into Transdanubia.

Q. To your knowledge, did Uebersee ever receive any of that money? A. No, they did not.

Q. Now, you heard Mr. Crittenden testify here and you heard Mr. Bayer testify with respect to the conferences held in Zurich.

Mr. Crittenden made a statement that Dr. Frankenberg stated that he was your father's agent and that your father owned the property.

Mr. Bayer stated he never had such a conversation.

With that in mind, let me ask you this question.

2445 Were you present at all the conferences which were held in Zurich? A. Yes, I think so.

Q. Did you ever hear Dr. Frankenberg, during any of those conferences, make the statement which Mr. Crittenden attributed to Dr. Frankenberg? A. No, never. It is ridiculous.

Q. Did you ever at any time, in the long course of years, in your association with Dr. Frankenberg, ever hear him tell anybody that he was your father's agent? A. No, never.

Q. Now, Mr. Burling asked Dr. Meier on Friday why Dr. Meier, the president of Uebersee, did not supervise the operations of the Transdanubia Corporation. Had you ever given any instructions to Dr. Meier in that regard? A. No.

Q. Or to Dr. Henggeler? A. No.

Q. Or to Dr. Adolph Gaeng? A. No.

Q. Have you ever asked Dr. Meier or Dr. Gaeng or Dr. Henggeler to supervise the operations or management of any of the American corporations or other investments of Uebersee?

2446 A. No. They never had anything to do with it.

Q. Now, would you state briefly, inasmuch as you speak in English, and I think it would be a little simpler, just what

were the duties of Dr. Meier as president and Dr. Henggeler and Gaeng as members of the board of Uebersee?

Mr. Burling: I object on the grounds that there is no showing that this witness is a Swiss lawyer or that he is familiar with the corporate charter of Uebersee.

Mr. Gallagher: I am asking him if he could state briefly what he knows of the duties of Meier and Henggeler and Gaeng in respect to Uebersee. I want him to tell, if he knows, to clarify what their job was.

The Court: He can tell what positions they hold.

Mr. Gallagher: As Mr. Burling said, if he is familiar with the corporation charter and all, he could state what their duties are under that, could he not?

Mr. Burling: No. It is a matter of construction.

The Court: Unless the charter defined them.

Mr. Burling: In that case it would be its own best evidence.

The Court: Yes, unless you account for the absence of it—

Mr. Gallagher: It is not too important. I will strike it, Your Honor.

2447 By Mr. Gallagher:

Q. Now, let us come down to Dr. Frankenberg. Did he have anything to do with the supervision of Transdanubia? A. No, never.

Q. Did he have anything to do with the supervision of the operations of any of the American corporations? A. No, never.

Q. Did he supervise or direct the investment policies of Uebersee? A. No, he did not. In effect, before he even came into the picture, with the exception of about $230,000, everything was already invested.

Q. You are talking about the year 1932 or 1931, are you? A. Yes, sir, I do.

Q. And that was before Dr. Frankenberg was a member of the board of directors? A. Before he heard about those investments.

Q. Well, if Dr. Frankenberg did not advise you with respect to your investments at the time that you sold the Opel shares to General Motors, who aided you in determining how you were going to invest that three and a half million dollars? A. I did that all alone in the beginning.

2448 Q. Would you explain, step by step, what you did when you arrived in the United States and what steps you took looking toward the investment of the funds which you thereafter were receiving from General Motors? A. After I had terminated the escrow agreement General Motors offered me a block of General Motors shares, 47,625, I remember, at the price of $24, which was a dollar or a dollar and a half below the stock exchange quotation, and they seemed very eager to sell this block, and as I had to wait for payment about four weeks, I thought it was a kind of an insurance against any devaluation of the mark in the meantime to acquire this General Motors stock.

Q. You say General Motors suggested to you that you purchase the 47,000 shares? A. Yes.

Q. Now, with respect to the remaining money, who gave you any advice, if anybody, in the United States with respect to those investments, with respect to that money? A. I think the first man I talked to about it was Mr. Von Clemm.

Q. Who was Mr. Von Clemm?

Mr. Burling: Would you like me to stipulate that, counsellor?

Mr. Gallagher: No. I will take the witness' answer.

2449 Mr. Burling: I believe he was prosecuting when you were first assistant in the criminal division.

Mr. Gallagher: I move that that be stricken, because I know nothing about it.

By Mr. Gallagher:

Q. Will you state who Mr. Von Clemm was? A. Mr. Von Clemm at the time was the so-called customer's man of a firm by the name of Burden-Cole, and I had met Mr. Von Clemm through a schoolmate of mine who had invited both of us to lunch.

Q. This was in October, 1931? A. In October, 1931, yes.

Q. You say Mr. Von Clemm was customer man of Burden-Cole? A. Customer man of Burden-Cole. In fact, he was the one from whom I bought the first Spur stock.

Q. Did you meet anyone else who aided you in investments through Mr. Von Clemm? A. I asked Mr. Von Clemm whether he knew any man versed in investments, and I specifically asked him for somebody speaking German, because at the time I could not speak much English, and he recommended me Mr. Hoffacker.

Q. Did you meet Mr. Hoffacker? A. I met Mr. Hoffacker in October, the second half of October, 1931.

2450 Q. Did you employ him as your investment counsellor? A. Yes. I made an agreement with him that he should trade the General Motors stock. I thought when General Motors was so eager to sell me this stock that the market might fall, so I thought I had better watch that stock and have it sold.

Q. Did he work with you thereafter for several years? A. Yes, that's what he did.

Q. At that time had your father given you any advice as to whom you were to employ as investment counsellor? A. No.

Q. Did he give you any directions as to how you were to invest the proceeds from the sale of the Opel shares if you determined to sell them? A. No. In a general way, he told me, "That is quite a big property you have. Don't try to enlarge it. It is big enough. The only thing you should do is to keep it together, and when you succeed doing so in these troubled times, you have done a lot."

Q. And he did not give you any suggestions as to whom you should talk to when you arrived in New York
2451 to aid you in investment policies? A. No; no. I think I did most of my investing through a firm by the name of Hallgarten and Company, in Pine Street, New York.

Q. Mr. von Opel, when you began to act for Uebersee thereafter, who gave you the power of attorney? Dr. Meier or Dr. Frankenberg or Dr. Haggeler? A. No; they were not in the picture yet.

Q. You mean Dr. Frankenberg was not even in the picture yet? A. No. I had not even acquired Overseas yet.

Q. I see. A. The first power of attorney I got from Overseas was signed by Dr. Martin Bloch, who was at the time, if I remember, president of Overseas.

Q. Now, you stated that Dr. Frankenberg came into the picture after you had invested practically all the proceeds which you had received from the sale of the Opel stock, with the exception of about $200,000. When was the first time that you did have any conversation with Dr. Frankenberg about the investments that you had made? A. I think that was after I had acquired the Spur stock, and I got somewhat worried—

Q. Could you fix that time, approximately? A. That must have been in the summer, 1932. I either had already acquired it or was in the way of acquiring it. I
2452 acquired it through Mr. Cole, of Burden and Cole.

Q. You say you had a conversation with Dr. Frankenberg about Spur? A. Yes. I told him that it seemed rather risky to have a gasoline retailer without its own gasoline supply and said they had always to fight off the big units like Shell and Standard, and they might cut off their supply; and I said I was interested in investing some of my money in crude oil in the ground, which was at the time selling at between six or eight cents. Even Dr. Frankenberg, who was not well versed in the oil business, thought that I could not make a mistake buying oil so cheaply.

Q. When was the next time, to the best of your recollection, that you had any conversations with Dr. Frankenberg with regard to your investments? A. I think the next time was in 1933, when the American banks got into trouble. I had certain applications at the time, and I was afraid that my funds in American banks might be frozen. So I talked to him, what could be done about it, and he suggested I should either convert those dollars into Swiss francs or should acquire gold.

Q. I see; and did you acquire the gold? A. I
2453 wired over to the National City Bank, which were holding securities of mine, and I asked them to acquire this gold; but, unfortunately, I did not follow Dr. Frankenberg's second advice and did not ship it immediately to Switzerland. I could have done such for at least a period of ten days.

Q. You have said previously that neither Dr. Frankenberg nor any other member of the board of administration of Uebersee took any part in the administration of the American corporations in which you, through Uebersee, had stock interest; is that correct? A. That is correct, with one qualification. I think I should point out that Dr. Frankenberg had a dual capacity, and so the turning point was 1935, in the summer, when I became heavily indebted, and at this time Dr. Frankenberg became, or, rather, the Adler Bank became a creditor of Overseas to the tune of three or sometimes even four hundred thousand dollars.

The Court: Suppose we take a five-minute recess.

(A short recess was had.)

2454 By Mr. Gallagher:

Q. We were at the point, I believe, when we took the recess, Mr. von Opel, when you stated that Dr. Frankenberg became important to you in this picture in and

around 1935, 1936, and 1937, when you needed money, because you were not in a liquid position; is that correct? A. Yes. At this time I could not export the gold from the United States, and I had to meet certain obligations, and I became rather illiquid.

Q. Did you negotiate loans through him and with the Adler Bank? A. Yes, I did such, and he loaned me at this time about $350,000.

Q. Did you pledge some of your securities with him? A. Yes, most of them.

Q. Did you pledge Uebersee shares? A. At the time, yes; later on I pledged some American stock.

Q. So in the years between 1935 and 1940, and thereabouts, if I understand you correctly, you were quite dependent on Dr. Frankenberg and his banks; is that correct? A. I should say between the years—about, somewhere, 1935 up to 1940 or 1941. Just before the war I sold some property and got into a liquid position again.

Q. But Dr. Frankenberg was not in the picture
2455 at the time you made investments in America with the proceeds from the sale of the Opel shares; is that correct? A. No.

Q. By that you mean he was not in the picture? A. He was not in the picture, no. He was—I think he became board member, together with Dr. Henggeler and Dr. Meier, in the beginning of 1932. But at the time, none of them knew anything about my investment.

Q. Just to come back to Mr. Crittenden again, in discussing Theodore Hoffacker, Mr. Crittenden made the statement that Theodore Hoffacker was an agent for Fritz von Opel and that Fritz von Opel did not breathe, move, or talk without his permission or advice. Is that a true statement or a correct statement? A. It is partly correct; I would say so much that Mr. Hoffacker had a very domineering position toward everybody, and he was the kind of man who thought he had all the answers, and

it was really very difficult to get along with him. I tried hard to. I hired him, and after I couldn't improve his manners, I fired him.

Q. Now, Mr. von Opel, you heard Miss Schoch testify that your father could not have become a devisen auslander and have taken his property out of Germany. Is that correct? A. I think that what Miss Schoch meant, if I understood her correctly—I think she later stated—

2456 Mr. Burling: Just a minute. I object, if Your Honor please, on the ground that it is not proper to rebut the testimony of an expert legal witness with a layman.

The Court: That is correct, isn't it, Mr. Gallagher?

Mr. Gallagher: Probably so. We will strike it and leave it for Dr. Kronstein.

By Mr. Gallagher:

Q. Let me put an assumption to you, if I may, and I hope in somewhat the method of Mr. Burling.

Let us assume that your father did not want to leave Germany, and let us further assume that he did not want to give any of his property to you—that is, the Opel shares; that he wanted to keep everything for himself, particularly all the rights under the escrow agreement with General Motors. Was there a way for him to do this practically without breaking any foreign-currency regulation?

Mr. Burling: The same objection.

The Court: The same ruling.

Mr. Gallagher: All right. That is all.

Cross Examination

By Mr. Burling:

Q. I believe on redirect, Mr. von Opel, you testified that you heard Mr. Crittenden testify that you had said to

him in Essen, in the summer of 1937, that you were operating under an escrow agreement with your father,
2457 that you had the management of your father's funds, and that you had a cousin who had similar relationship to an uncle of yours; is that right? A. Pardon me. You speak about an escrow agreement. What do you mean by that?

Q. I am sorry; a usufruct agreement. Pardon me. A. That is what I stated.

Q. I am just trying to refresh your recollection—just trying to place your recollection—now.

You heard Crittenden say that you told him at this dinner in Essen that you were managing your father's funds under a usufruct agreement and that you had a cousin who was managing funds of an uncle of yours under a similar arrangement; is that not what you heard him say? A. Yes, that is what he testified. Yes.

Q. You told Mr. Gallagher just now, did you not, that you had no cousin who had any such relationship with any such uncle; is that correct?

Mr. Gallagher: I think the record will reflect, Mr. Burling, that he testified in response to my question that he had no cousin who had a contract with his uncle which contained a usufruct provision or a provision similar to a usufruct.

Mr. Burling: All right.

By Mr. Burling:

2458 Q. But you did have a cousin to whom your uncle transferred 600 shares of Opel stock; is that not true?

Mr. Gallagher: Now, Your Honor, at this point, if Mr. Burling is going to go into the question of the relation-

ship of the uncle with the cousin, then I submit that this opens up the criminal decrees, and we are back into that situation.

Mr. Burling: If Your Honor please—

The Court: Whether it opens it up or not, I don't know. I will hear you on the question of the admissibility of it.

Mr. Burling: Mr. Gallagher sought to—

The Court: Let me hear from him, first, on his objection.

Mr. Gallagher: All that I asked Mr. von Opel about was a question which negated directly the answer given by Mr. Crittenden, and it was confined to the question of whether or not a contract containing a usufruct provision was being exercised and under which his cousin was operating. I submit that any further cross-examination by Mr. Burling is limited to a contract of that nature.

The Court: What he was trying to rebut, as I understand it, was the statement of Mr. Crittenden as to what Mr. von Opel told him—what this witness told him; isn't that right?

Mr. Gallagher: This witness was rebutting the fact that he did not state that to Mr. Crittenden.

The Court: But in rebutting it, then he said his
2459 cousin never did have any such transaction.

Mr. Gallagher: No; he said his cousin did not—he had no cousin, to his knowledge, who operated under a contract containing a usufruct provision, or provision similar to a usufruct, with his uncle. Now, any other contract which may have been negotiated with his uncle, and the validity of that, or otherwise, I suggest or submit is not relevant.

Mr. Burling: I submit, if Your Honor please, that it is directly relevant to show that Crittenden, who was a widely known American lawyer, let alone German lawyer, correctly understood what Fritz von Opel said.

I wish to show that Fritz von Opel had an uncle who also had 600 shares of Opel stock, just as his father did;

and that that uncle purported to sell those shares to a cousin of Fritz von Opel, which cousin also is in Switzerland, and got the money out of Germany in exactly the same relationship.

I offer that not to show that the uncle was guilty of fraud or that there was some tendency in the Opel family generally to commit frauds, but merely to show that what Crittenden was told at the dinner in Essen is substantially what he said here, except that he made a highly technical error of German law in saying it was a usufruct contract instead of a sale contract.

Mr. Gallagher: And, I might say, a highly technical error of fact, in that he is saying in 1937 that the cousin
2460 is holding under a usufruct, whereas in the contract that Mr. Burling is talking—

The Court: I think the testimony Crittenden gave was as to conversations this witness had with him. If you deny the conversations and stop right there, then, of course, the record will be one way. But, as I understand it, you went a little further and said to his actual knowledge no such transaction—or in effect no such transaction—as that had occurred.

Now, then, he wants to show that one like that was—I mean as to what he told him and what Mr. Crittenden understood really is important—

Mr. Gallagher: Then, I would like to ask if we may conclude from that that we could submit the decree which found the uncle guilty and that he had to bring back the money?

Mr. Burling: I will stipulate that the uncle was found guilty of the fraudulent transfer and did bring the money back.

The Court: We cannot get too far away from the issue. If we get off on too many collateral issues, we will have this case reversed no matter which way I decide it.

If you want to stand on the fact that they did not have any transaction, and let it stay in, then I think probably the fact that they had some such transaction is admissible, because you are asking me to draw the inference that Mr. von Opel never made any such statement as that,
2461 because no such transaction ever occurred that he knew about. Counsel is now asking if there was not a transaction at least of that purport that happened.

Mr. Gallagher: And that the cousin was operating under it in 1937?

Mr. Burling: No; I am asking, Wasn't it a highly similar contract? It would not rebut Crittenden if he made some error as to provisions of usufruct.

Mr. Gallagher: Go ahead. Let him answer.

The Court: That is the length to which I am going to permit you to go: that it was a somewhat similar transaction.

Mr. Burling: I do not want all the details of it, because I do not want to get too far afield. I think I understand Your Honor's ruling, and will be guided accordingly.

Will you read the question now, Mr. Reporter, please?

The Reporter (Reading):

"Question. You told Mr. Gallagher just now, did you not, that you had no cousin who had any such relationship with any such uncle; is that correct?"

By Mr. Burling:

Q. Is that your testimony? A. That is correct, yes.

Q. On October 5, 1931, you had an uncle, Dr. Fritz Opel, who owned 600 shares of Adam Opel A. G., did you not? A Yes, that is correct.

2462 Q. You had a cousin, Hans von Opel, residing in Switzerland at that time; is that not true? A That is correct, yes.

Q. Is it not a fact that in October, 1931, Dr. Fritz Opel purported to sell to Hans Opel the 600 shares? A. No; that is not the way I remember it.

Q. At some time or other after October 5, 1931, there was a transfer—there was a purported transfer—of the shares from Dr. Fritz Opel, a devisen inlander, to Hans Opel, your cousin, a devisen auslander; isn't that so? A. Are you asking me what I know about it, or what I have read in the secret Nazi report you gave us?

By the Court:

Q. What you knew about it before you talked to Mr. Crittenden. A. I knew the following: I arrived in New York by the middle of October, 1931, and I received a wire from my uncle whether I would represent him, and I wired him back I would not; and I heard from General Motors—John Thomas Smith—that they had a block of 200,000 General Motors shares for sale and that my uncle already had sold his 600 Opel shares against the block of 152,000-odd numbers of General Motors shares.

By Mr. Burling:

Q. So as not to go too far—

2463 Mr. Gallagher: Just a moment. I want him to finish explaining what he knew before 1935.

Mr. Burling: I am trying to comply with His Honor's request and not go too far in detail.

Mr. Gallagher: You asked him as to his explanation of what he knew. I submit the witness should have an opportunity to finish explaining what he knew. It will take only another minute.

The Court: I think probably so.

The Witness: That makes for this odd number of shares, this 47,625, they wanted to sell me. That was the remainder of 200,000 they wanted to sell at all.

By the Court:

Q. The principal thing we want to know, is, What was the nature of the relationship of your uncle to the shares after he transferred them to your cousin? A. I heard about this matter about two years later in connection with the criminal proceedings.

Q. Was that before you had this talk with Mr. Crittenden? A. Oh, yes; it was many years before this time I had this talk with Crittenden.

Q. What information did you have with regard to what interest your uncle retained, if any, after he transferred it to your cousin? What was that information? A. I knew
2464 at the time I met Mr. Crittenden in Essen that this whole contract was a sales contract between my uncle and my cousin and that that was immediately revoked after the authorities found out about it. That is all I knew about it.

Q. Well, but as of the time of the conveyance, did you have any information as to whether your uncle retained any title to it? As of the time of the conveyance by your uncle to his son, did you have any information? A. It was no conveyance to his son, Your Honor. It was a purported sales contract from my uncle to my cousin, but that was immediately revoked.

Q. Wasn't that his son? A. No; his cousin.

Q. His nephew? A. Pardon me. I said my cousin. It was his nephew.

Q. That is what I mean. As of the time before you talked to Crittenden, we are trying to find out—at least, I think that is what he is trying to find out—as of the time you talked to Crittenden, what was your understanding that your uncle had done with regard to retaining any interest in that stock as of the time that he is reported to have sold it to his nephew. A. I knew in 1937, of course, that my uncle was forced to return everything into Germany—back into Germany.

Mr. Burling: Into his hands, if Your Honor please.

The Witness: Into his hands, yes; that is correct.

2465 Mr. Ingoldsby: May the witness be permitted one minute to explain what the transaction was? I submit that taken out of its setting, the way it is left, I think, does not present the correct picture.

The Court: I don't mind his telling what he knows. I think that is what we are trying to find out.

Mr. Ingoldsby: The conversation about which we are talking occurred in the summer of 1937 in Essen. Now, all the proceedings involved in this other transaction with the uncle dated from 1931 through 1934, so—

The Court: I understand all that. Here is the point: Mr. Crittenden testified to a conversation which he denies.

Mr. Ingoldsby: That is right.

The Court: Then, Mr. Gallagher asks him, in effect, if any such conversation occurred. Mr. Burling tried to show that one substantially along this line did occur.

Mr. Ingoldsby: I get the point.

The Court: I am trying to find out what he knew about it.

The Witness: When this gift agreement was made October 5, I asked my father to keep it secret and under no circumstances to tell my uncle anything about it, because he knew that he was not dependable and would try to do something of his own in a foolish way, and therefore I was very much embarrassed when I arrived in New York and when I heard that on October 6 General Motors had received a cable where my uncle had sold his 600 Opel

2466 shares.

I knew then, at this time, that my father apparently had told my uncle; and when I came back in Germany, of course, I told my father that it was a big mistake he made, and he said it was his own brother, and he couldn't—he felt he should tell that to him.

Then; the next thing I heard was in the spring or summer of 1932, when I was in New York. I heard in Wall

Street that somebody was buying German bonds—special Karstardt bonds—and I knew that my uncle was interested in Karstardt, and so I immediately thought that he was the one who was going to repatriate those shares into Germany, and I knew that that was not permissible under the German law.

The Court: I think we are getting right many details in. I guess we have enough on it from his point of view, probably. If you want to bring anything out on redirect, you may.

Mr. Burling: My point is satisfied, Your Honor.

By Mr. Burling:

Q. Coming to a different topic, Mr. von Opel, you say that up to the time you left Europe about 2000 tons of bauxite was the total production of the Hungarian mines? A. Yes, approximately.

Q. Yet it is the fact, is it not, that you negotiated a contract on behalf of Transdanubia with Giulini Brothers in the fall of 1939 to supply Giulini with a hundred
2467 thousand metric tons of bauxite? A. Yes, that is correct. It was done to offset this stealing of bauxite by Koranyi.

Q. But, at any rate, you did cause Transdanubia to contract to deliver a hundred thousand metric tons? A. Yes. As I told you, there was a loophole in this contract.

Q. Your father knew nothing about the bauxite business; is that your testimony? A. No.

Q. He was several times in Budapest before you left Europe, was he not? A. Yes; he always went hunting in Hungary.

Q. You never told him you had bauxite interests in Hungary? A. It is possible that I mentioned it to him in a general way.

Q. You say that General Motors in October, 1931, were agreeing to sell you a block of shares below the Stock Exchange price; is that right? A. That is correct.

Q. Did you not know that General Motors went on the Stock Exchange and bought the shares which they delivered to you? A. No, that is not correct; they came from

2468 Morgan and Company.

Q. Did not Morgan buy them on the Exchange at the request of General Motors? A. I have no way of knowing where Morgan got them from, but I think they were—they must have been owned by somebody connected with General Motors, either Morgan or maybe General Motors Management Corporation. I have no way of knowing that. But it certainly would not make any sense if they bought stock at a higher price and they offered it to me.

Q. No, if that were the fact.

In May, 1932, you got a power of attorney from Dr. Frankenberg to deal with Uebersee securities; is that right? A. That is correct. I think that is the second power of attorney I got.

Q. It was on the basis of the power of attorney which you received from Frankenberg that you directed the City Bank-Farmers Trust Company to transfer the funds to Uebersee; is that right? A. No, that is not right, Mr. Burling. I did not receive power from Dr. Frankenberg but from where it is signed by the officers of the corporation.

Q. I will read to you from your affidavit in the Gold Case at folio 171:

"At the end of May, 1932, I received from Dr. Frankenberg a further power of attorney dated May 9, 1932,

2469 of which a true copy is attached marked Exhibit W. On the basis of this power of attorney I wrote City Bank-Farmers Trust Company on May 31, 1932, directing it to open an account in the name of Uebersee Finanz-Korporation A. G."

and so on. A. Not a power of attorney from Frankenberg. I understand that it is a power of attorney of Uebersee. It is an exhibit attached to the Siold Case. It is signed by, if I remember correctly, Dr. Frankenberg and, on the other hand, Dr. Henggeler or Dr. Meier.

Q. In the early months of 1932, you gave Dr. Frankenberg a proxy to vote Uebersee shares, did you not? A. That is possible; I don't remember it.

Q. Well, I will ask you to examine Exhibit L to your affidavit and state whether that refreshes your recollection.

Mr. Burling: This, if Your Honor please, is the minutes of the tenth regular general meeting of the plaintiff corporation.

By Mr. Burling:

Q. "Mr. Fritz von Opel, represented by Dr. Hans Frankenberg, Zurich, by virtue of written proxy of 497 shares." A. Yes, that is correct.

The Court: You will be some few minutes longer, won't you?

2470 Mr. Burling: I have no more, if Your Honor please.

The Court: If you cannot complete it in a few minutes, it can wait?

Mr. Burling: It would greatly assist me if we could finish before the luncheon recess.

The Court: Very well.

By Mr. Burling:

Q. You recall that it was your father who suggested that Frankenberg should be made the major director of the holding company? A. I think I answered that before:

that I had discussed with my father and that I asked him whether—what he thought of Dr. Frankenberg, and I told him—I said, "I would like to have Dr. Frankenberg come on the board. He sold me originally the Uebersee Korporation."

Q. In fact, you had a conference with Dr. Frankenberg at the very moment you received the first power of attorney, did you not? A. Afterward or in connection with it, yes. I received the first power—At this time, as I just stated, after I had received the first power, afterward I asked Dr. Frankenberg whether he would like to become a board member.

Q. Perhaps I misunderstood you. Did you not say to Mr. Gallagher that when you got the first power of attorney, Frankenberg was not in the picture? A. I stated

2471 and—

Q. Well, did you or did you not state that? A. May I say what I feel I have stated?

Q. Surely. A. I think I have stated that Mr. Gallagher asked me whether the first power of attorney was signed by Dr. Henggeler, Dr. Meier, and Dr. Frankenberg; and I said, "No, none of the three were yet members of the board. It was signed by Dr. Martin Bloch."

That is what I have stated.

Q. At any rate, right after you stated that, Frankenberg agree to become a member of the Board of Managing Directors of the Korporation, did he not? A. Yes; all three of the gentlemen.

Q. They were not all three managing directors, were they? A. Not managing directors; board members.

Q. Frankenberg also agreed to become managing director? A. Yes.

Mr. Burling: That is all.

Mr. Gallagher: That is all.

(The witness left the stand.)

Mr. Boland: We will recall Dr. Kronstein.

Thereupon, DR. HEINRICH KRONSTEIN was recalled
2472 as a witness and, having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Boland:

Q. Doctor, you were here during the course of the testimony of Miss Schoch, the Government expert on German law, were you not? A. Yes, I was.

Q. You heard her testimony? A. Yes, I did, sir.

Q. As a result of her testimony, do you wish to change your testimony in any sense of the word? A. No.

Q. Did you hear Miss Schoch discuss certain court decisions of Germany in respect of sham transactions? A. I did.

Q. Do you have any comments to make on those cases, Doctor? A. Those cases show that even original documents can be scheinvertrag. I never denied that.

Q. So it is your opinion that they add nothing to the case?

By the Court:

Q. There isn't any difference in the German law with regard to what is sham from what is in the American
2473 law, is there? Your approach is just the same? A sham is a fake transaction, not an honest transaction, not a true one? On the face of things it is regular, but if we disregard the face of the instrument or the face of the transaction, and something else is the true situation, it is a sham in German law; isn't that true? A. German law distinguishes between two different types of sham. One type of sham is when two parties agree that it is a

contract, when it is not a contract at all. Another type is if those parties agree to A but write B.

Q. I understand. A. That is the first of two types. Then, the second type, if A is valid but not B, nothing is valid.

The Court: That is exactly the same as in American law.

A. The only difference is that the German contract is something different. But the whole approach is a question of scheinvertrag.

Q. That is what I mean, yes. A. It is a question of evidence.

By Mr. Boland:

Q. Changing the subject slightly, Doctor, Miss Schoch testified that in analyzing Plaintiff's Exhibit 5, which is the gift agreement, and the Hachenburg drafts and letters—so-called Hachenburg letters—which I think are Plaintiff's Exhibits 7, 8, and 9, she came to the conclusion that
2474 the father had intended to have a right in rem created in the future.

On cross-examination, I believe, she testified that this right of the father was an in personam right against the donee—the son—to create a usufruct as a right in rem in the future.

Do you believe that such an interpretation is a reasonable interpretation? A. That is a possible interpretation. I believe it is my possibility No. 2 in my scheme of possible interpretations.

Q. So that being a reasonable interpretation, it is, in fact, your No. 2, is it not? A. Yes, it is my No. 2.

Q. There was one qualification. I am not sure of the significance Miss Schoch placed in this, but she said, "in the near future." Is that a reasonable interpretation of those letters? A. May I see the documents?

Q. Yes (handing papers to the witness). A. I do not see any reference in the Hachenburg draft to the time when the demand might be made. It just states that Mr. Fritz

von Opel is entitled, and upon demand of the donors obliged, to assign shares to a holding company which he owns. In this case the parents would have the use of a usufruct.

Q. Let us assume that "in the near future" were a
2475 reasonable interpretation of those papers.

The Court: Excuse me. May I see that a minute?

Let me tell you what I think she said. I may be wrong, but I thought there was some language in here—Is this No. 5?

The Witness: No.

Mr. Boland: No; these are the Hachenburg papers.

The Court: I may be mistaken, but I would like to ask you this myself, whether she said it or not. I thought she took this language which immediately follows the transfer of the title to the shares:

"Usufruct in the shares is not assigned to Fritz von Opel; it remains with Wilhelm and his wife until both,"

and so forth.

I understood her to say that that indicated, in her mind, that that was to have come about immediately or in the very near future, and that it was simply a mistake of the draftsman that those words of conveyance were not included. I think that is what she stated.

The Witness: That is based on one point. My friend, Miss Schoch, believes that usufruct can only mean having a right in rem; but it can have different meanings.

The Court: I thought she agreed to that, but she said that that language, as I understood it, was one of the reasons—that, as well as this language of the previous
2476 lawyer—that indicated to her that it meant in personam. That is what I understood.

By the Court:

Q. Do you think there is any significance to that language, that this usufruct in the shares is not assigned; it remains

with him and his wife? Does that rather positive statement indicate to you that that might tend to show that the donors wanted to keep the right with them at that time or sometime in the immediate future, rather than some indefinite future? A. The parties agreed on a contractual right. The Opel parents shall have a contractual claim for income, since they do not include conveyance.

The Court: I do not know that it is a question of law anyway.

Mr. Boland: The only point in this question, Your Honor, is to bring out this: Let us assume that they did contemplate "in the near future." What, in effect, would have occured if they did not set it out?

The Court: He agrees to that.

Mr. Boland: I am not sure I asked her that question.

The Court: I made it perfectly clear before she left the stand that if there came a time when there was some word of conveyance or some delivery to him or his agent, the actual right in rem did not occur. She certainly said that.

2477 Mr. Boland: That is true, but she did not testify as to what effect there would be legally if the original intent of the parties was that they create a right in rem in the near future and, in fact, did not.

The Court: All right.

Mr. Boland: If there is not some legal significance to that position, I think we are very close to being in agreement on what the law is.

The Witness: It has no effect on the contract.

The Court: You can ask him that. Until there comes a time when they would specifically perform, then no absolute right lodges.

By Mr. Boland:

Q. So if no demand had been made by the donors of this gift agreement, if it meant that the intent was that one be

created in the near future, and if in fact no demand had been made, it would have no effect on the contract? A. No effect on the validity of the contract.

Q. Doctor, you heard Miss Schoch, in a long dissertation and analysis of laws concerning foreign funds control, describe why and how the Reichsbank director had nothing to do with the issuance of licenses in respect of waiving rights of the donor. You have had quite a bit of experience in practicing in Germany under the foreign
2478 exchange laws and regulations, have you not? A. I have.

Q. From your experience and practice, would you attach any significance to a statement of clearance by the Reichsbank director to this effect: that our lawyers have gone over the problem carefully, and we have come to the conclusion that no court action can be taken; that, in effect, our hands are tied?

Would that have any significance to you as a German practicing lawyer, familiar with this foreign fund problem? A. That would have very much significance for me. It is perfectly correct, what Miss Schoch said, that the licensing authority is a section of the Department of Commerce, but under the director of the Reichsbank, handling the entire collecting of foreign currency, and whenever a lawyer had such a problem, he was perfectly accustomed to go to the Reichsbank, because—at least, that was the feeling of every lawyer—that was where the decisions were made; and Mr. Wilhelm had such a high position, so high that I believe I would not have even dared, in the Nazi state, to say, "I don't believe, Mr. Wilhelm, if you tell me that you have this decision on the basis of a discussion with the Department of Commerce"—I would not even have dared to write a letter and say, "I would like to have that in written form by the Department of Commerce."

Mr. Burling: I move to strike that as not being a legal answer. The witness testified that he agreed with

2479 Miss Schoch that Wilhelm had no jurisdiction in the matter, and the waiver would have to be written.

The Court: I will let it stay in and will let you argue it a little later.

By Mr. Boland:

Q. Coming back to October 5, 1931, and considering the evidence that Wilhelm von Opel had 600 shares of stock in an escrow agreement located in New York City—Are you familiar with the escrow agreement? A. I have seen it.

Q. Now, was there any way in which Wilhelm von Opel, assuming that his primary motive and purpose would be to protect those shares as an American asset here in America for his own protection, should he ever desire to leave Germany—was there a way available for him to accomplish this purpose without having gone through the gift agreement? A. Yes, I think so.

Q. How could he have accomplished this purpose? A. One would be to extend the agreement for as many years as General Motors would agree with him.

Q. To extend the escrow agreement? A. To extend the escrow agreement.

Q. You know, do you not, that the escrow agreement by its terms would have expired in 1934? A. Yes.

2480 Q. So what you mean is— A. Extend it without any license at the time when the gift agreement was made.

Mr. Boland: Thank you. That is all we have.

Cross Examination

By Mr. Burling:

Q. I correctly understood you to testify, did I not, that you agree with Miss Schoch that, technically speaking,

the Reichsbank did not have authority to grant waivers or to declare that waivers were unnecessary? A. Technically, yes; but practically, no.

Q. I see. But, as a matter of technical law, an oral statement made by Wilhelm would be of no value in a defense to a prosecution; isn't that true? A. Mr. Burling, practicing law in Germany in 1935—December, 1935—when I left, especially in the matter of currency, was not a matter of law; it was a matter of false power and diplomacy.

Q. But insofar as there was any law, as you understand the concept of law— A. As far as—

Q. Wilhelm's statement would have been irrelevant, wouldn't it? A. Irrelevant. Even under the regular situation, I couldn't see it. If the highest next to the
2481 president of the Reichsbank—the highest official tells me, or one of the very highest officials of the Reichsbank tells me, that is the case, and I have discussed this matter with lawyers, I couldn't see it is of any significance.

The Court: He is making the same distinction as if the Attorney General would say it over here and the Supreme Court might say something to the contrary.

The Witness: That is possible.

Mr. Burling: If Your Honor please, not quite that. It is more like the Chairman of the Federal Reserve Board.

The Court: I understand the distinction. That probably was not an apt illustration. Yes, I see. I have your point.

Mr. Burling: I have no more questions.

Mr. Boland: We have no more questions.

Mr. Gallagher: We have no more questions, and we have no further witnesses.

Mr. Baum: On the question of exhibits, we have gone through the record, and we find that there are ten or fifteen exhibits which we neglected to offer in the course

of the testimony; and I also note in the record that we have, in the case of a great majority of the exhibits, the whole number, such as Exhibit 2, and the translation, such as 2-A. I think I would like to arrive at an understanding with counsel that where one number is offered, both may be considered as exhibits.

2482 The Court: That is all right.

Mr. Gallagher: I have no objection to that where one is a translation.

The Court: That applies to both sides. All exhibits that have been heretofore identified in the German and the translations that have been identified may be received in evidence where either one has been received. That is by stipulation of the parties.

Mr. Baum: Now, the list of exhibits which have not been offered are—

The Court: I will tell you what I think you should do. I think you should show that to Mr. Gallagher, and if there is any objection, I will let you argue it. But you let me know.

Mr. Baum: May I note just two, Your Honor. Two of them are reporter's mistakes. Defendant's Exhibit 43 has come into the record as received in evidence as 43-A, and there is no 43-A. Defendant's Exhibit 68 is marked received as 69, which means there are two 69's. If that can be corrected—

* * * * * *

2508 PROCEEDINGS

The Court: Gentlemen, I have arranged, now, to give you today to argue this, and as much time as you need on Monday to conclude. I hope you will try to conclude before noon on Monday, if possible. I shall probably have to adjourn today between half past 3 and 4. Are you ready to proceed?

Mr. Gallagher: Your Honor, we have pending before the Court the question of the deposition of Mrs. von Opel which was taken on yesterday. The Government's official copy has not arrived; but anticipating that perhaps there would be a delay, I brought a report from New York with me, and I have tendered the Government a copy of that deposition. I feel at this time that before we renew any objections, and before we go forward with our closing argument, we should have a determination of the question of Mrs. von Opel's testimony.

The Court: What is the question about it?

Mr. Burling: I believe it is in the form of a motion made by me on the ground of newly discovered evidence. I believe Your Honor reserved ruling on that pending the taking of Mrs. von Opel's deposition.

I now renew the motion and ask leave to read Mrs. von Opel's deposition into the record.

Mr. Gallagher: We have no objection.

The Court: All right. Then, the motion is granted.

Mr. Burling: We do have a mechanical problem.
2509 We have only one copy. If counsel would be good enough to let us have two momentarily, we can read it with more facility.

Mr. Gallagher: There are just a couple of corrections that, to my recollection, should be made. I do not have the other copy of the report. I have no objection to pointing them out to Mr. Burling, and the reading will be subject to correction when we get the official copy. Is that all right?

Mr. Burling: That will be all right.

(The deposition of Margot von Opel was then read to the Court. Mr. Burling read the questions on direct examination, and Mr. Baum read the answers.)

Mr. Burling: This is the direct examination by Mr. Baum of Mrs. von Opel:

"Q. What is your full name? A. Margot von Opel.

"Q. And you live at this address, 433 E. 51st Street, Apartment 120, New York City?"

Mr. Gallagher: Just a moment, Mr. Burling. If I might suggest it, will you have the record reflect that the oath was administered prior to the taking of the testimony?

Mr. Burling: Yes; the reporter administered the oath prior to the taking of this deposition.

(The reading of the deposition was continued as follows:)

"Q. And you live at this address, 433 E. 51st Street, Apartment 120, New York City? A. Yes.

2510 "Q. You are the wife of Mr. Fritz von Opel? A. Yes.

"Q. And you and Mr. Fritz von Opel were married in 1929? A. Yes.

"Q. And you have lived together as husband and wife since that date? A. That is correct.

"Q. Mrs. von Opel, I call your attention to the year 1937—April, 1937. Do you remember where you were at that time? A. I would not know.

"Q. Do you recall that in April, 1937, Mr. Fritz von Opel was on a trip? A. I was in Berlin then.

"Q. And do you remember that Mr. von Opel came to Berlin from Essen in April, 1937—the end of April, 1937? A. I do not remember but since I saw the letter that I have written to Mrs. Langnick, I did say that he had come. I could not tell.

"Q. You are now referring to an excerpt from a letter you wrote on April 28, 1937, which I presume Mr. Gallagher has shown you? A. That is correct.

2511 "Q. In that letter you stated Mr. von Opel came the previous day and would stay with you until Friday of that week? A. Could you show me the letter?

"Q. Surely. I show you the excerpt of the letter of April 28, 1937 (hereinafter referred to as Exhibit A) for the purpose of assisting the witness to answer.

(Witness reads.)

"Q. Who was Mrs. Langnick, by the way? A. She was our secretary and very good friend.

"Q. When you say 'our friend' you mean Mr. von Opel as well as yourself? A. Yes.

"Q. You said in that letter that Mr. von Opel would remain with you until Friday and then would return to St. Moritz via Russelsheim where he expects to have a conference with Dr. Frankenberg. A. That is what I wrote.

"Q. And how did you know Mr. von Opel was going to have a conference with Frankenberg in Russelsheim? A. Perhaps he told me—I don't know—or perhaps he had planned it before.

"Q. Mr. von Opel told you that before? Had Dr. Frankenberg told you he was going to be in Russel-
2512 sheim? A. That is not true.

"Q. You were told by Fritz von Opel that he was planning to have a conference in Russelsheim with Dr. Frankenberg? A. Yes. Mr. Baum, I must say all I know about this is what I wrote in that letter.

"Q. But what you wrote in that letter is correct? A. What I wrote in that letter is correct, yes.

"Q. Now I will draw your attention to December, 1940, at which time I believe you were in the United States?

"Mr. Gallagher: For the record, the exhibit you have now directed Mrs. von Opel's attention to will be marked Exhibit B.

"Q. I asked you, you were in the United States on December 24, 1940, were you not? A. Yes.

"Q. And at that time you wrote a letter to Mrs. Langnick bearing the date of December 24, 1940, and containing

the language which appears in the excerpt Exhibit B, is that correct? A. Yes.

"Q. I call your attention to the statement in that letter which, in English, reads, 'To be sure, it was high time—and a true piece of luck—' A. How do you translate it 'to be sure'? How do you get that?

"(Off the record discussion of the translation.)

"Q. (Continuing) 'To be sure, it was high time—and a true piece of luck that Frankenberg came over with us who continued to kick our little master until he cleaned up the mess in Shreveport.' A. Where does the word 'kick' come in? Our 'treten' is never 'kick.' Certainly not. You can say he 'sat upon him.' We use that word when we make wine. It means to 'stamp' or to 'work on a person.' You never say 'kick.' 'Kick' would mean that you pushed somebody.

"Mr. Gallagher: How do you translate the word 'treten', Mrs. von Opel—to 'work on somebody'?

"A. I would say 'working on somebody.'

"Q. Did you make that statement, Mrs. von Opel? A. I did.

"Q. And what did you understand by the expression 'the mess in Shreveport'? A. First, I know Fritz was losing very much money down there and he was talked into this whole thing by people I did not believe in. That was Crittenden and Mr. Grogan. They were brought to Fritz as far as I know by Mr. Hoffacker, whom I personally had thrown out of the house in St. Moritz; so I had no
2514 reason to believe the other people were any better.

Then I knew from conversations that Fritz had lost money there and when I came over here and saw a great deal of Dr. Frankenberg, I had hope that Fritz would stop that down in Shreveport and I asked Dr. Frankenberg to

influence Fritz as much as he could, that Fritz should give that up and I wish Fritz would listen, but he never listens—he gets mad at him.

"Q. And do you remember when you came to the United States, Mrs. von Opel—in about the year 1940? A. Oh, that was on the 8th of May, 1940.

"Q. And Dr. Frankenberg came over on the same boat? A. He came with me and with a friend of mine, Mrs. Schwarzenbach. She is dead.

"Q. And is it your testimony, Mrs. von Opel, that to your knowledge Dr. Frankenberg worked on your husband Fritz to clean up the mess in Shreveport? A. I made that statement.

"Q. And it is correct? A. It is correct. He did it because I asked him to do it.

"Q. You asked who to do it? A. I asked Frankenberg to help me—to ask Fritz to give up the work in Shreveport.

"Q. And Dr. Frankenberg you knew was a director of the Uebersee Finanz-Korporation at that time, did
2515 you not? A. Yes. He really has tried his best to give Fritz advice. Fritz never listens.

"Q. Well, apparently Mr. von Opel listened in this case, since you say he did clean up the mess in Shreveport. A. That is correct.

"Q. Now I draw your attention to November, 1939. I show you a paper, which will hereinafter be known as Exhibit C A. She was in Germany when I wrote this letter.

"Q. Who? A. Ruth—Mrs. Langnick.

"Q. Now this excerpt, which will be referred to as Exhibit C, purports to be an excerpt from a letter from Mrs. von Opel to Mrs. Langnick written from Zurich and dated November 18, 1939, which reads as follows:

"'There can be no question of American citizenship. I should like to know who continues to put such rumors into circulation, most likely Dr. P. whom I dislike doubly since his failure toward you. It is true, in this direction various

other matters have transpired which became necessary because of the business over there.'

"You made that statement, Mrs. von Opel? A. Yes, I did.

"Q. And it is correct? A. It is.

2516 "Q. It would appear you were referring to a question raised by Mrs. Langnick as to whether someone had become an American citizen. Who was the person involved? Was it Mr. von Opel? A. Yes.

"Q. Now, the last sentence which I read you—'It is true, in this direction various other matters have transpired which became necessary because of the business over there,' Would you state what that sentence refers to? A. You must understand I wrote this letter into Nazi Germany. All letters were opened and censored. Mrs. Langnick had, on account of us, very many difficulties in Germany and I was all the time worried about her because she had been with the German-Russian Petrol Company before she came to us and then she became our secretary and couldn't get another job. This is what I refer to when I say that Dr. Pilder I disliked anyway and as far as I remember I had tried to get her in at the Dresdner Bank and Pilder would not take her on account of her—call it political outlook, and so on.

"Q. Now, Mrs. von Opel, this excerpt which I read you refers to citizenship. That is what I am asking you about.

A. I understand that very well, and when I say in

2517 that letter that other things had developed which were necessary on account of business, I meant that in case people tell her, or there are rumors, that we have changed our citizenship, which will certainly be considered in Germany a crime, it would reflect on her. So I said it was done for business reasons.

"Q. In other words, in that sentence you are referring to the fact that you and your husband had become citizens of Liechtenstein? Of course, on that date you had not yet

become citizens of Liechtenstein, had you? A. What is the date?

"Q. November 18, 1939. A. Oh, I thought it was October. November 10th, and confirmed by Parliament on November 21. That is as a member of the community of Planken and formal adoption on the 21st of November.

"Q. And you said this citizenship was acquired for business purposes, is that correct? A. To give her protection.

"Q. Why did she need protection? A. Because she had any way so much trouble from knowing us.

"Q. Oh, I see.

"Now, Mrs. von Opel, I draw your attention to the year 1946. Did you have conversations in July, 1946,
2518 with your husband concerning the subject of the usufruct? A. When?

"Q. In July, 1946. A. That is very likely.

"Q. Isn't it true that you and your husband tried to analyze the origin of the usufruct which is contained in the gift agreement—Plaintiff's Exhibit 5—which related to the 600 Opel shares? A. When you ask me this way I certainly couldn't tell you whether it was a certain month, day or hour. I certainly had conversations with Fritz about it. We talked about it at all times.

"Q. I am not asking you for any particular day, Mrs. von Opel. I am asking you whether around July, June, or a month in 1946 you discussed the origin of the usufruct with your husband. A. Possibly.

"Q. Why were you worried about the usufruct in 1946? A. The property was vested and as far as I understood the vesting order was because the Government had the absolutely absurd and crazy idea that the money did not belong to Fritz.

"Q. You did know the usufruct had been waived in
2519 1935, did you not? A. It had been waived, yes.

"Q. I see, and you came to the conclusion in 1946 that the origin of the usufruct was the distrust of your father-in-law, Wilhelm von Opel, towards his son, Fritz

von Opel? A. I don't understand the word 'trust.' Please repeat that.

"Mr. Gallagher: I would like the record to show that this deposition is being taken of Mrs. von Opel while she is in bed recovering from an operation and with a perforated ear drum.

"A. And continuously under medication and I am dizzy.

"Q. Reread the question. (The question was read.) A. 'Distrust' is not the word. As far as I know about the usufruct—Am I entitled to see this letter? So far as I know about this usufruct it was at that time made when my father-in-law gave my husband the money and we were just married and the old man was afraid that we would spend too much money.

"Q. You knew a Dr. Daniel Gros, did you not? A. Yes.

"Q. And he was a lawyer in Germany? A. Yes.

"Q. Did you not write him in July, 1946, referring to the usufruct, 'In trying to analyze its origin one finds
2520 that it grew from nothing but a distrust of a father against his own son'? A. How did I write that in German?

"Q. I will now show the witness a photostatic copy of what purports to be a letter dated July 22, 1946, to Dr. Gros from Margot von Opel, hereinafter referred to as Exhibit D. A. (Reads the excerpt.) I remember the letter.

"Q. Did you come to the conclusion in 1946 that the origin of the usufruct was the distrust of a father against his own son? A. I used in this letter 'misstrauen.' That would be translated 'distrust.' That is correct because, as I told you, when we married, the old man had the idea we would spend too much money and I call that mistrust. To start out with, it is more in the word. What I mean is that the old man did not trust his son when he married me. He thought it was a crazy idea and that I would do nothing but spend money.

"Q. Did that mistrust continue throughout the years? A. No.

"Q. But anyway, in 1946 you believed the origin of the usufruct was that mistrust as you described it? A. Yes.

"Q. Now I am coming to another topic. Is it correct to say that the family relationship between Wil-
2521 helm and Fritz von Opel was psychologically extremely complicated? A. I think it was not more complicated than all human relationships are.

"Q. Didn't you tell Dr. Gros that it was? A. That is what I write in this letter, definitely. But I believe all human relationships are terribly complicated.

"Q. And isn't it right to say these complicated family relationships are the only explanation for the never-ending distrust—almost fear—of the son for the father? A. You must understand, Mr. Baum, that I have worked for a psychiatrist and sometimes I go perhaps a little bit too far when I analyze things. There is certainly the father-son complex—something very complicated.

"Q. Did you not tell Dr. Gros that there was a never-ending distrust? A. That is what I write.

"Q. And you told Dr. Gros that? A. Yes, but I refer to the conclusion I come to. You must understand that as you read this letter. At that time Fritz was always risking his life with sporting things; I had gone through
the experience of having gotten interned—getting
2522 afraid of life—and I would say, 'Good God, what is going to happen to me if something happens to Fritz.' Then I said I couldn't suggest to the old man to change this in his will and I said because what would it help. I would sit here without a penny and I didn't want to suggest that to Fritz because I think it is an awful thing to say to somebody—what is going to happen when you die. I don't like to do that.

"Q. Whether or not you were concerned as to what would happen in the future, you did state, and now state,

there was a never-ending distrust between Wilhelm von Opel to his son, Fritz von Opel? A. I put first of all 'misstrauen' in quotation marks in this sentence.

"Q. May the record show that 'misstrauen' refers to the English word 'distrust.'

"And you thought there was a curious shyness—almost fear—of your husband Fritz towards his father, is that correct? A. I wrote that.

"Q. Is it correct? A. I must have felt about it that way at that time. And it is correct. Every son has a feeling that he has to prove to his father that he is a superman or something like that. Fundamentally, the old man was scared of Fritz.

2523 "Q. Now, Mrs. von Opel, you have been married some twenty years, is that correct? A. That is correct.

"Q What has been your relationship with the mother-in-law in those twenty years? A. Not too good.

"Q. Not too good? A. We get along, but I don't like her.

"Q. And she doesn't like you, is that correct? A. She writes me very sweet letters.

"Q. But she doesn't like the people with whom you are friends, is that correct? A. I wouldn't be surprised.

"Q. And she doesn't like the way you live, is that correct? A. I wouldn't be surprised.

"Q. That is what you told the Hearing Board in Miami, isn't that so? A. Yes.

"Q. And you also told the Hearing Board you didn't like your father-in-law, didn't you? A. I don't think I ever said it that way. I said I get along with them and I respect them. It is a different word for me.

2524 "Q. Did you not tell the Hearing Board in Miami, 'I don't get along with the old man but I respect

him'? A. It is possible, I said it and if you read it out of the record, it must be correct.

"Q. Did you ever know a man by the name of Eric Deku? A. God forgive me, yes!

"Q. Did you ever tell Mr. Eric Deku that people think you are wealthy but in reality all your wealth belongs to the parents of your husband? A. He is crazy!

"Q. I am not asking if he is crazy. I am asking if you ever said that. A. I never said a thing like that. He was one of my special friends who always had a pleasant time meeting me because I told him he is a crook. I even told him that he is interested to have Fritz killed, because of his idea of flying a balloon in the middle of the night and wrecking it, almost, in Germany. I said he must have great interest in having Fritz killed.

"Q. Who was flying a balloon in the middle of the night? A. Fritz.

"Q. And when was this? A. Sometime in the thirties at the time when we knew Eric Deku—I don't know just when.

2525 "Q. Would it be correct to say it was sometime between 1932 and 1936 or 7? A. That could be.

"Q. Now, Mrs. von Opel, I believe that for the moment I have only one more question. Will you describe in detail the circumstances under which you had dinner with Adolf Hitler? A. I knew Leni Riefenstahl. She was a movie actress, a sports woman, a kind of crazy person. I knew her, I think, from 1925 on. She was making at that time the picture of the Olympic games. I must say she was an excellent movie director.

"Q. That was in 1936, was it not? A. Yes, 1936. And I was on my way down to Switzerland coming from Kempen, and going down to Switzerland Leni told me that she is going to finish some sport pictures in Nuerenberg and asked me whether I would come with her. I disliked the idea because I wanted to go on and I disliked the idea

of spending days with her, but Fritz said to me, 'You better go, you'll probably laugh your head off when you see all these people down there. So I went, and at the evening we went to the hotel to have dinner and at the same hotel Mr. Hitler was with his gang and he sent over to us to the table his adjutant, who came to me and said, 'Pardon, you are arrested.' I looked up and said, 'Good God,
2526 don't make jokes!' because I did not feel very safe there. I had the feeling I was really sailing under the wrong flag sitting there. But he said, 'You are arrested to have dinner with the Fuhrer.' And he turned to Leni and asked her to join them also. Leni was delighted and I said I think I better stay here with the cameramen and she said no, no, no, you must come, must come. So we both went over there and we certainly had no dinner because nobody gets anything while this man was talking. I wanted a glass of wine but she said in the presence of the Fuhrer there was no wine. He himself was drinking almond milk. The conversation between him and Leni did not stop, as though she had known him all her life. It was too beautiful for words, because she was sitting there, almost on her knees in front of the Fuhrer, and he said, 'In the year 1943 you are going to make for me the bible of the Nazi Movement,' and Leni, with her hands like in prayer, said, 'My Fuhrer, my Fuhrer, how could I ever have the strength?' And he banged his fist on the table and said, 'The strength I am going to give to you.' And she was absolutely swooning. And then she got up. I never have seen such manners in my life. They left us sitting there, their hands raised in 'Heil Hitler.' And I said to Leni, 'Good God, what are you doing in a situation like that?'

2527 "Q. Now, Mrs. von Opel, you went to Germany practically every year through 1939, did you not?

A. Yes.

"Q. I believe that is all now. I would like to ask that in event the files arrive before we have concluded, I may be permitted, if I find it necessary, to ask any additional

questions based on the letters in that file. I think in fairness we can't hold up the deposition indefinitely today.

"Mr. Gallagher: Certainly."

(The questions on cross-examination were then read by Mr. Gallagher, and the answers were read by Mr. Boland.)

"Q. Mrs. von Opel, when you use the phrase 'too beautiful for words' to describe Leni Riefenstahl's actions and all, I gather from your manner when you are saying it that you are being sarcastic? A. Certainly.

"Q. Mr. Baum asked you some questions and showed you a letter which you wrote to Dr. Gros in 1946 and identified as Exhibit D, and drew your attention to the fourth page where you state therein, 'I suggest that my father-in-law, if he agrees to modifying the contract, write directly to Fritz informing him about it and leaving me out altogether.'

"Would you state what portion of the contract you
2528 are asking Dr. Gros to talk to Fritz and the father about modification? And in connection with that sentence, I also draw your attention to page 2, the fourth line thereof, in which it states, 'It seems absolutely crazy to leave this provision in the contract.' Now, will you state as to those two portions of the letter what you were talking about? A. I was talking about the reversion.

"Q. By that you mean that the fact that if Fritz were to die without issue the parents Opel would have the legal right to get back Fritz's money and that would leave you with nothing, is that correct? A. That is correct.

"Q. Now, Mrs. von Opel, in 1939—November of 1939—you and Mr. von Opel became citizens of Liechtenstein. The defendants have stipulated that to be a fact. Would you state the reason why you and, if you know, why Fritz became citizens of Liechtenstein? A. Because we wanted to denounce our German citizenship."

Mr. Burling: "Denounce" should be "renounce."

(The reading of the deposition was continued as follows:)

"Q. By that do I understand you to mean you no longer wanted to be considered Germans by any fashion under the law? A. Yes.

Q. Now, you stated in connection with Exhibit B, which is the letter of December 24, 1940, in which you said, '—and a true piece of luck that Frankenberg came over with us who continued to kick our little master until he cleaned up the mess in Shreveport,' that you asked Frankenberg to work on Fritz von Opel. At that point I wish to ask you this: Why did you call Fritz von Opel 'the little master'? A. That is a long story.

"Q. Can you state the story briefly? A. The first secretary we had was called 'Poodle' and when you talk about your master from Poodle's point of view you call him 'Herrchen.' It has nothing to do with little master.

"Q. Now, when you say that you asked Frankenberg to work on Fritz, would you state again in general what you told Frankenberg and what you asked him to do? A. You see, I had discussed quite often with Frankenberg matters concerning Fritz because I was very often worried that he didn't take advice from anybody under God's sun and he was running for that reason, not knowing people too well, into lots of difficulties and Frankenberg was a very conservative man. I always had hoped he would have some influence on Fritz.

"Q. Frankenberg was a friend of yours and a friend of Fritz'? A. Yes.

"Q. Did you ever hear Frankenberg give Fritz any orders? A. Orders! Certainly not! He has advised him. First of all, he is a much older man, he is a banker and Fritz was working at the factory—he was an excellent mechanical engineer but I don't think that he understands

too much about industries and so on. That was the reason why he got into the hands of crooks.

"Q. Now, did you ever hear Frankenberg tell anybody that he was Wilhelm von Opel's agent for the purpose of safeguarding this gift Wilhelm had made? A. That is ridiculous.

"Q. Now, Mrs. von Opel, in connection with Exhibit A, which is an excerpt from a letter of April 28, 1937, in which you state that Fritz is going 'to St. Moritz via Ruesselsheim (Saturday and Sunday) where he expects to have a conference with Dr. Frankenberg,' could you tell me why you put Saturday and Sunday in that letter and in parentheses? Do you have any recollection? A. Yes.

"Q. Would you state what that is? A. I did not believe Fritz was going to Ruesselsheim at all.

2531 "Q. And why did not you believe that, or did I understand you correctly then that the parentheses indicated your disbelief? A. Yes, I think he went away for the week end, just as I made the crack here about the geese with feathers. Because I think perhaps usually he was chasing the girls, but this time he was really going out for geese.

"Q. And do I understand you to say that the parentheses indicated you did not believe this story? A. Yes.

"Q. Now, let me ask you this. On April 28, 1937, do you know whether Wilhelm von Opel was in Ruesselsheim or Wiesbaden, or any point in that area? A. No, he was not. He was in South America.

"Q. On April 28, 1937, he was in South America? A. He was in South America.

"Q. And do you have any recollection as to when he went? A. He left on the Capareona with Count and Countess Edelsheim.

"Q. Did Fritz ever tell you whether he had ever given any money to Count Edelsheim for his father on that

2532 trip? A. Yes, he did, as far as I remember.

"Q. Do you have any idea about how much he gave

the Count for the father? A. It could be around 1,000 pounds, or something like that.

"Q. So then, if I understand your testimony correctly, on April 28, 1937, it would have been impossible, even if it were true, that Fritz von Opel was going to meet with Frankenberg in Ruesselsheim, for Wilhelm to have been there, inasmuch as he was in South America? A. He certainly was not there. I doubt very much if there was ever a conference with Frankenberg. I don't even remember that Frankenberg ever went to Ruesselsheim. When he was a man of around 25, Frankenberg may have been in Ruesselsheim, but as far as I remember, Frankenberg was never in Ruesselsheim.

"Q. Did you ever hear Dr. Frankenberg, Wilhelm von Opel and Fritz sit down and have any discussion about the proceeds of this gift or about the American corporations? A. Never.

"Q. To your knowledge, did Wilhelm von Opel ever give Fritz von Opel any instructions as to what he was to do with the gift or the American corporations? A. Never.

"Q. To your knowledge, did Wilhelm ever request
2533 any dividends or sums from Fritz? A. Never. Why should he? He had all the money he wanted in Germany.

"Q. Now, you stated at the Miami hearing to which Mr. Baum has referred—By the way, what was your physical condition when you were in Miami? A. I was not well.

"Q. You stated at that time that you did not like the father but that you got along with him. What, however, were your relations with the father during the 1930's? Were they good or bad? A. They were friendly. He came every year to our house, and would continue there for a couple of weeks, and I tried to give him a good time.

"Q. That was the house at St. Moritz? A. Yes.

"Q. If I understand you correctly, from your previous statement in response to Mr. Baum's question, you were

apparently not friendly in 1929 when you were married, but thereafter, during the thirties, you became friendly with the father. Is that correct? A. Yes.

"Q. Now, Mrs. von Opel, you have a home in St. Moritz, do you not? A. Yes."

2534 Mr. Gallagher: At this time we recessed due to the arrival of Mrs. von Opel's doctor. He had to "shoot her up" a little bit.

(The reading of the deposition was then continued:)

"Q. Mrs. von Opel, you have maintained your home in St. Moritz since about 1934, I believe? A. 1932. We bought the house in 1932. In 1933 it was remodeled.

"Q. Do you have any ornamentation on your house at all? A. What do you mean—ornamentation?

"Q. Do you have any flags or decorations on your house at all? A. Certainly. I always had the flag out when we displayed flags.

"Q. What flag did you display? A. Liechtenstein.

"Q. Do you have any friends in Liechtenstein? A. Many.

"Q. Did you have any friends, any members of the royal family of Liechtenstein? A. Yes.

"Q. Will you state who that is? A. Prince Constantin.

"Q. Is Mr. von Opel also a friend of Constantin? A. He does not know Tino.

2535 "Q. Are you a friend of his wife? A. Yes, I know her very well. She is a daughter of Count Wilczeck from Vienna.

"Q. In view of the fact that there has been a recess while your doctor was here, I can't quite recollect whether I asked this question or not. You know of no income or dividends or payments of money or the like to Wilhelm von Opel by Fritz? A. No, he never made any.

"Q. Did you ever hear Wilhelm ask Fritz for any accounting or statement or information about the American corporations owned by Fritz? A. No. He only asked Fritz sometimes how the business is and whether it is good or bad and I think Fritz had always been a little afraid his father might find out he has lost money because when the old man gave him the money he said to him, 'If you can keep, under the times in which we are living, just that which you have, that is a great achievement nowadays' and when Fritz was losing money in Shreveport I think he always felt a little ashamed that he was not living up to what the old man expected of him as a business man.

2536 (Mr. Burling then read the questions on recross examination, and Mr. Baum read the answers.)

"Recross Examination by Mr. Baum

"Q. Now, Mrs. von Opel, you said Dr. Frankenberg was a friend of yours and of Fritz. He was also an old friend of Wilhelm von Opel, was he not? A. He was not an old friend. He knew him. You see, we make a difference between a friend and an acquaintance. Frankenberg was a friend of us and an acquaintance of Wilhelm.

"Q. At least he had known Frankenberg for many years, had he not? A. Yes, because he had lived near him for many years.

"Q. Is your answer yes, then? A. That they knew each other, yes.

"Q. If I told you that your husband, in an affidavit in 1935, referred to Dr. Frankenberg as an old friend of his father, is that incorrect? A. Fritz probably made the same mistake. I would call him an acquaintance.

"Q. This affidavit was made in English. A. But he probably said friend and meant acquaintance. I would not say they were friends.

"Q. Now, in referring to the excerpt Exhibit A,
2537 you say that you did not believe Fritz was going to have a conference in Liechtenstein"—

Mr. Gallagher: It is a mistake; in Ruesselsheim.

Mr. Burling: "Question: Now, in referring to the excerpt Exhibit A, you say that you did not believe Fritz was going to have a conference in Ruesselsheim with Dr. Frankenberg, is that correct? A. You see, when I wrote it I put it in parentheses. It was a crack.

"Q. You mean sarcastic? You mean even though he told you he was going to see Dr. Frankenberg you did not believe it? A. Yes.

"Q. You stated that Wilhelm von Opel was in South America at that time. How do you know he was in South America at that very date? A. Because he left in April.

"Q. How do you remember that? A. I just remember it.

"Q. And he went to South America, you say, with Count Edelsheim? A. Yes. Count Edelsheim came from Budapest.

"Q. Was his name Gyilai? A. Yes. Something like goulash.

"Q. And you said that you believed that Fritz
2538 had given Count Edelsheim about 1,000 pounds for the father in connection with the trip to South America, is that correct? A. Yes.

"Q. Do you know whether other payments were made to the Edelsheims in Budapest? A. I think Fritz once invited the Count and his father to shoot a stag in Hungary and paid something for that.

"Q. Do you know whether Wilhelm von Opel frequently went to Budapest? A. I even met him there once.

"Q. When was the last time you were in Budapest, Mrs. von Opel? A. I do not know.

"Q. Was it in 1939? A. No. Before that.

"Q. Since you were married to Fritz, have you ever been in the home of Wilhelm and Marta von Opel in Weisbaden? A. Certainly.

"Q. How many times? A. I do not remember.

"Q. Was it often? A. Not too often.

2539 "Q. Isn't it a fact that Mrs. von Opel, referring to your mother-in-law, did not want you to come into that house? A. No. I didn't like to go there because she didn't like dogs. They keep the dogs in the cellar with the coal and I hate that.

"Q. Referring to Liechtenstein, you stated in reply to Mr. Gallagher's questions that you had friends there and referred to Prince Constantin. Who was Prince Constantin? A. He was a cousin of the ruler.

"Q. What is the ruler's name? A. Franz Josef.

"Q. Now, you stated that at the time your father-in-law gave Fritz the property he told him to see if he could keep it, which would be a great achievement. Were you present when that was stated, or did Fritz tell you his father said that? A. Fritz told me.

"Q. In other words, you did not hear Wilhelm von Opel say that? A. No.

"Q. Were you in Liechtenstein or Wiesbaden"—

Mr. Baum: "or Ruesselsheim," it should be.

Mr. Burling: It must be an error again.

2540 Mr. Gallagher: Ruesselsheim.

Mr. Burling: "Question: Were you in Ruesselsheim or Wiesbaden in 1931, or were you living in Belgium at that time? A. We were living in Braschaet at that time.

"Mr. Baum. I believe that is all."

(Mr. Gallagher then read the questions on re-cross examination, and Mr. Boland read the answers.)

"Re-cross Examination by Mr. Gallagher

"Q. Have you any recollection, Mrs. von Opel, as to how long Wilhelm von Opel was in South America? Was it a period of weeks, months, or what? A. Several months.

"Q. Let me ask you this. Do you know of any transatlantic telephone calls that Fritz von Opel ever made from America? A. No, I do not know of any. Fritz is rather stingy himself. He always writes postal cards but when it comes to telegrams and telephone calls he always writes a penny card."

Mr. Gallagher: If I might correct that, I think she said he was very generous.

Mr. Burling: No.

Mr. Gallagher: All right.

"Q. Then you know of no transatlantic calls? A.
2541 He never made any. He would not even call me if I were dying.

"Q. There has been some testimony in this case that Calvin Houghland stated that in February of 1941 he and his wife were at your house for dinner and at that time, in West Palm Beach, Fritz came back after an absence from the room and stated to Calvin that he had just been talking to Hungary for thirty minutes. A. Perhaps it was another 'geese with feathers' he was talking to.

"Q. Was there any such statement made by Fritz, or any such telephone calls? A. The telephone call certainly was not made.

"Q. Now there has also been some testimony in this case that J. Mason Houghland called Fritz von Opel on the transatlantic telephone to Switzerland in September of 1939. Did any transatlantic telephone call come into your home from Switzerland? A. None.

"Q. Do you have any knowledge of any such transatlantic telephone call from Houghland? A. I have not the slightest knowledge.

"Q Now, I am going to direct your attention to August of 1939 Mr. J. Mason Houghland testified that in the latter part of August 1939 Fritz von Opel telephoned
2542 him from some place in Cologne, Germany to England and asked him to come over to Germany to meet the father Wilhelm, that after all Wilhelm was really his boss, and Mr. Houghland stated that the next day he called Mr. von Opel back somewhere near Cologne, Germany. Do you know where Fritz von Opel was during the latter part of August, 1939? A. I positively know it.

"Q. Where was he? A. In Switzerland. He left Kampen in the first days of August.

"Q. Do you recollect why he left? A. Because we knew that there was a war coming. I had put Fritz on a train with 100 litres of gasoline that he personally carried with a friend in the train, because you just couldn't get any gasoline in Germany and he had to go with the friend to"—

Mr. Gallagher: I forget what that town was.

Mr. Baum: I do not remember, myself.

—"where he dropped her and then continued to go down to Zurich—at least 400 kilometers."

Mr. Gallagher: At that point I believe the record should reflect I asked a question, Where was the family estate, as far as the route was concerned that he took? and she said around 400 kilometers away.

2543 Mr. Burling: That is correct.

Mr. Gallagher: "Q. And your recollection is that Fritz left Kampen to go back to Switzerland— A. I know it. For one reason I left Kampen around the 20th and I worked there at least ten days.

"Q. After Fritz had left? A. After Fritz had left.

"Q. So that Fritz would have left Kempen some time before the 15th of August? A. Definitely. I would say between the 12th and the 15th.

"Q. Then do I conclude correctly from your testimony that Fritz von Opel did not have a channel call to England and a return call the next day to Germany? A. It is impossible."

(Mr. Burling then read the questions on second re-cross examination, and Mr. Baum read the answers:)

"Second Re-cross Examination by Mr. Baum

"Q. Is it not a fact, Mrs. von Opel, that Wilhelm von Opel made more than one trip to South America? A. He made a world cruise once.

"Q. How about trips just to South America? A. No. As far as I remember, not.

2544 "Q. In other words, you remember only one trip? A. Yes.

"Q. There is an estate near Cologne we have been talking about. It belonged to Fritz von Opel. What was it called? A. It is called Williamsruh.

"Q. And that is near Cologne, is it not? A. It is near Sost in Wesphalia.

"Q. Now, you stated that Fritz never made any transatlantic calls. If I told you that between Decemeber 1940 and May 1941 there were 105 long-distance calls made from your home in West Palm Beach, including at least 12 transatlantic calls, would you say that is incorrect? A. I would say it is incorrect. Long listance calls it is absolutely possible, because my friend Anna Marie Schwarzkopf was very ill at that time and I practically called her every day.

"Q. And you had no knowledge of whether or not any transatlantic calls to places like Switzerland, Hungary, Germany, England or Holland were made? A. I told you I absolutely believe it impossible. To Germany is out of the question anyway because all long distance calls to Germany were discontinued after about November 20, 1939.

2545 "Mr. Baum: That is all."

(Mr. Gallagher then read the remaining questions and Mr. Baum read the answers.)

"Mr. Gallagher: If I were to tell you, Mrs. von Opel, that Mr. and Mrs. von Opel made another trip to South America early, I believe, in 1935 or so, would you say that might be possible? A. It might be possible.

"Q. But you are certain that in 1937 he traveled with Count and Countess Edelsheim to South America? A. Yes, that is correct.

"Mr. Gallagher: That is all."

* * * * * *

2546 Mr. Burling: If Your Honor please, I do not know who identified this document or anything about it.

Mr. Gallagher: I realize that is the matter. I am asking whether or not you will concede the fact that this is a back-up folder of the books which have heretofore been offered. Any entry in here can be confirmed in the books which are in evidence.

Mr. Burling: If Your Honor please, I can't concede a document I have absolutely no knowledge of. There is nothing in the record, as far as I can recall, about this.

Mr. Gallagher: Yes. I originally offered it pursuant to the stipulation. Then when I withdrew to put in the books, I offered what I thought were all of the so-called back-up folders. This is one of the back-up folders for one of the years that the books are in for.

The Court: Give him a chance during the noon recess to check on it. Call his attention to what identification you had.

Mr. Gallagher: All right. The importance of it, Your Honor, is that it contains therein an itemization showing a

charge to Fritz von Opel of a thousand pounds to be delivered to Count Edelsheim at the boat which was sailing on the 7th of April.

The Court: He wants to check on the identification.

Mr. Burling: If Your Honor please, I do not be-
2547 lieve the document identifies itself.

The Court: That is what I say. You want to check on the identification to see what the record shows.

Mr. Gallagher: The entry is right in the books.

Mr. Burling: If Your Honor please, if there is a document here which tallies with this book, it still does not identify it.

The Court: I understand that. I understood Mr. Gallagher to say it was identified by some witness along with others, but he simply failed to offer it. I say, you can check that up during the noon recess.

Mr. Gallagher: I want to correct you. I do not want you to labor under any misapprehension. When I offered the books, after Mr. Burling's stipulation, this was one of the books that was being stipulated and had been offered at that time, identified, and put into the record. However, when Dr. Meier came here and we subsequently offered Plaintiff's 141 through Plaintiff's 154 and 174 to 176, included therein, in those numbers are the books which are in and the back-up folders for the years covered by those books, which were 1937 to the present date.

This is the one remaining back-up folder, which covers the year 1937, which we unfortunately forgot to offer at the time. It confirms the fact of the payment to
2548 Count Edelsheim. The same entry appears in the book which is in the record. I was merely offering it for the purpose of putting the whole charge in there.

If not, we will stand on the record in the book, but I would appreciate it if Mr. Burling would look it over and see what he thinks after the noon recess.

Your Honor, at this time—

Mr. Burling: Before you argue—

Mr. Gallagher: No; this is not an argument.

Mr. Burling: We have some exhibits which Your Honor said we should stipulate with counsel, if possible.

Mr. Gallagher: Before we get to that point, if I might, I would like to renew again, Your Honor, our objection to Defendant's 90, 97, and 98. I move to strike any testimony with respect to them from the record, as well as remove the documents themselves.

As you recollect, those are the three documents from the Giulini files. One is dated in March of 1940; one is October, 1940; and one is a letter of February, 1942.

Now, as I have previously advised the Court, these documents were not admitted by us pursuant to any motion to admit. Number one.

There has been no concession that they were kept in the regular course of business. There has been no showing that in any wise the shop-book doctrine would be
2549 applicable. The only showing that has been made is somewhat of an authentication of the signatures being the signatures of the gentleman involved.

Now, purportedly, or apparently, these letters came from the files of Giulini Brothers in Germany. They were apparently kept by Mr. Frick. Mr. Frick is alive and living, and has not been brought here.

We submit that anything kept in the Giulini files, including an aid memoir, which is a reporting, in one of the plaintiff's exhibits, of what took place at the conference, prepared by whom we do not know, kept in Giulini's files, is sheer hearsay and inadmissible.

As far as the letters showing any continuendo at that time which would tie in the plaintiff corporation, Uebersee, with a subsidiary, Transdanubia, we submit there is no predicate for that assumption.

True enough, one letter is written on the letterhead of Transdanubia; but Mr. von Opel, prior to that time, had advised him to lease the mines.

There has been no showing as to whether or not the man who writes the letter to Giulini in Germany, on a Transdanubia letterhead, is acting as the agent of Transdanubia in his capacity of Transdanubia being our subsidiary and operating as such or whether he is writing the letter as an agent for the lessee who has acquired the
2550 enemy properties of Transdanubia under a lease. There has been no showing as to whose agent he is at that time.

We submit the record shows, much more convincingly, that he be the agent of the new lessee, pursuant to Mr. von Opel's orders of the previous May, 1931.

So, with that thought in mind, and with the additional thought in mind that they are from Giulini's files, with no showing that they were kept in the due course of business, no person here to identify them, the substance of them being hearsay, we again renew our objection and move to strike.

Mr. Burling: I agree that these documents do not come under the shop-book rule. They are not offered on that theory at all. I submit, however, that our friend's objection is premature as a matter of logic, because, of course, if we can't tie Uebersee in to Transdanubia, then what Transdanubia is doing is wholly irrelevant; but I submit that we will be able to show that. In the course of our argument I am prepared to argue that. But I think the time to say those letters should be put out is after Your Honor has considered whether we tie Uebersee in to Transdanubia.

If Your Honor finds that Uebersee was in fact managing or controlling Transdanubia in 1942, then the contracts and reports of Transdanubia's officers are admis-
2551 sions. If Transdanubia is a wholly owned subsidiary of Uebersee, the plaintiff here, and if Uebersee kept up a business relationship with it, then I say that a report written by the president or the manager of

Transdanubia is an admission that they were doing business.

We do not offer these exactly to prove the truth of the declaration, but these letters themselves are acts of doing business, particularly one in 1942.

The Court: That was the view I took of it, because I understood it was the act of an officer of this particular corporation. That was the basis of it. I mean, one of those spontaneous acts of an officer of a corporation, which, if it does have any connection with Uebersee—and that question I have left open until the argument is completed—might constitute the doing of business with an enemy.

The point is not that we are going to consider the point that he made as being correct, or take that into account, but the mere fact that, as an officer of the corporation, he is taking an act in furtherance of the program in Hungary. It is the act itself. I mean, the mere writing of the letter by a president of a corporation is an act. It is an act of

2552 the managing director, or whatever he was—I have forgotten his title now—but he was one of the managing officers. He is writing a letter in that capacity, and that might be doing business—in other words, may constitute the doing of business—subject to your argument.

I will leave it in and let you argue it more fully at the trial.

As you gentlemen know, in these equity cases the appellate courts do not hold us very strictly to what we admit. After I hear the whole case, it may be that I will hold that it does not amount to doing business, anyway.

Mr. Gallagher: All right, Your Honor. I will abide by your ruling.

The Court: You can argue, during the course of your argument, again, if you like, the question of the inadmissibility, and I will take the whole matter under advisement, and I will give that some thought. Mr. Burling's argument

was the basis of my tentative admission of the documents. I understood they might consist of an act of the corporation itself which might be held to be the doing of business.

Mr. Gallagher: With just one thought that I would like to leave in your mind—that there was no showing that this man, when he wrote, was writing as an officer of the Uebersee or as an agent of some new lessee, which was
2553 our last knowledge of the fact.

The Court: I will hear you on that when you argue the case. I will leave it in for the time being and probably won't make a specific ruling on it, but I will bear that in mind in connection with the argument of the case.

Does that clear up your point?

Mr. Gallagher: Yes. We will re-raise it.

The Court: In other words, I am leaving it in evidence, subject to further argument, if you wish.

Mr. Gallagher: All right, Your Honor.

Mr. Burling: Now, I believe it is agreed, if I may read a stipulation, as to certain documents that we have offered: Defendant's 8, 10, 42, 43, 44, 47, 48, 50, 54, 68, 79, 84, 85—

Mr. Ingoldsby: If you will skip 84, 85, 86, 87, and 109, we will agree to your stipulation.

Mr. Burling: Then we also offer 108. I omitted 113 and 114, which will—

Mr. Ingoldsby: To keep the record straight right there, we will agree that we have no objection to the reception in evidence of any of the documents which were referred to by Mr. Burling, with the exception of documents numbered 84, 85, 86, 87, and 109.

(Defendant's Exhibits for identification 8, 10, 42, 43, 44, 47, 48, 50, 54, 68, 79, 108, 113, and 114 were received in evidence.)

2554 Mr. Burling: I offer these documents, and I might say to Your Honor, these are documents which all relate to the transaction which has the X mark

on it on the chart, the purported sale of the Uebersee shares to clients of the Swiss Bank in 1936.

I do not understand my friend's objection to the documents. I do not believe there is any question as to the authenticity, because they come from the files of the plaintiff corporation. I am unable to argue the point, because I do not know what the objection is, since the documents have been identified and are concededly documents from the plaintiff's own files.

Mr. Ingoldsby: Your Honor, our objection to the documents just referred to is all on the same basis, and it is all on the ground of relevancy, and I press this point with some vigor, because I think it becomes important, because I think the X'd out transaction, referring to the Swiss corporation on the chart, all refers to the transfer of the Uebersee shares to the Swiss Bank.

I believe that Your Honor will recall what the transaction was. Do you recall the details of it? Mr. Burling has stated it several times.

The Court: I believe I do, if we are talking about the same thing. Remind me of it again. Is this the
2555 Frima?

Mr. Ingoldsby: No, Your Honor.

The Court: This is not Frima?

Mr. Ingoldsby: No. Frima is the Liechtensteinean entity which held the shares of Uebersee.

The Court: Now, that had to do with this holding tax?

Mr. Ingoldsby: That did not, Your Honor.

The Court: I mean the Frima.

Mr. Ingoldsby: No, Your Honor.

The Court: Well, identify this one to me, the one you are talking about.

Mr. Ingoldsby: Frima, the administrative corporation, appears here (indicating). In 1936 this corporation, Frima, was holding the Uebersee shares. The corporation went through a transaction with this Swiss banking corporation, which is now X'd out. The transaction, in effect,

was to pass the technical legal ownership of the stock and, by virtue of a proxy arrangement which put the voting power back into Frima—

The Court: Isn't that what we are talking about?

Mr. Ingoldsby: Yes, that is what we are talking about.

The Court: That is what I understood, yes. That is what I understood when I said I thought it was the
2556 Frima transaction.

Mr. Ingoldsby: I beg your pardon. I thought you meant the transfer of the shares from Uebersee to Frima.

The Court: No; I meant from Frima to the Swiss corporation and out to a half dozen Swiss people who had an agreement that it would remain in escrow. Is that it?

Mr. Ingoldsby: That is it.

The Court: Yes; I remember that.

Mr. Ingoldsby: May I state my objection to them?

The Court: Yes.

Mr. Ingoldsby: My objection to the admissibility of those documents, which relate to that transaction, is simply this: that the inference which I am quite sure will be sought to be drawn from that transaction is that this was a fraudulent or sham and fictitious arrangement in connection with the handling of the stock of the Uebersee Korporation.

Now, first of all—I do not mean to argue the point; this is stating the objection—we contend, of course, that it is not a fact, and that the Treasury Department never seriously contended that it was. There has never been any fraud penalty assessed in connection with this.

We submit, further, that the going into the transfer of the Uebersee stock from Frima to the Swiss banking corporation is completely collateral to this proceed-
2557 ing, collateral in the sense that I am quite sure that we would not have been permitted to have called as a witness in rebuttal, say, for example, Isadore

Kresel, who was an attorney in connection with it, or Mr. Marin, who handled the matter directly, officials of the Swiss banking corporation or of the United States Treasury Department, to show what took place.

Now, undeniably, there was involved in the transaction some connection with the personal holding company tax. We submit that that is completely collateral to the main issues in this case.

It is not that we deny any of the genuineness of any of the documents which are offered; but we say that, granting that they are genuine, what do they have to do with the particular issues in this case: namely, Did Wilhelm von Opel pass valid legal title to the gift to Fritz von Opel? Does it have anything to do with the citizenship of Fritz von Opel? Does it have anything to do with the usufruct or with anything else which might be material to this case?

Now, in view of the argument that we anticipate will be made on these documents, we strenuously object to their admission.

Mr. Burling: May I say, Your Honor, before I come directly to Mr. Ingoldsby's main point, that there
2558 is a further point to these documents. They are offered to tie Frankenberg in as the manager—the de facto manager—of Uebersee. For example, plaintiff's 84 is a cable from New York which Frankenberg sent to the Adler Bank, relating to this. 85 is a cable which the Adler Bank sent to Frankenberg. 86 is entitled, "Memorandum for Dr. Frankenberg." I am not sure that I am not skipping. I am trying to pick these up hurriedly. 84 is a cable signed "Frankenberg."

A second argument which I make, which also precedes my reply to Mr. Ingoldsby, is that one of these documents relates to what we charge is the use of this device by Uebersee, by the plaintiff corporation here, to defraud the British Enemy Property Custodian. I think it is admissible to show that the plaintiff so managed its

affairs, so hid its true ownership, that it defrauded and concealed from the British Enemy Property Custodian the true ownership and recovered back its plantation in Tanganyika; notwithstanding the fact that it is conceded here, or, at least it is asserted here, that the beneficial owner of Uebersee is Fritz von Opel, and notwithstanding the fact that it is conceded that at the time they tried to and succeded in getting the plantation back, Fritz von Opel was a German and hence not entitled to recover back the plantation.

2559 I say that there is this entire picture, starting with whatever happened either in October or November, 1931, right down to date, to show the whole pattern or plan of concealing the true ownership so as to defraud whatever government might be involved—Germany, Britain, the United States—and that Your Honor can take the entire thing as a single pattern of deception, of concealment.

I would like to refer to what Frankenberg said when he said that we did not understand in this country, but in Switzerland it was customary to hide capital. Capital came from all over the world to be hidden there. I think it is the totality of plan, and Your Honor can see that ultimately the capital here was in 1942—

The Court: Did the plaintiff offer any testimony about this at all?

Mr. Ingoldsby: About the transfer to the Swiss banking corporation?

The Court: Yes.

Mr. Ingoldsby: I do not believe so. Did we?

Mr. Baum: Fritz.

Mr. Ingoldsby: If we did, it was only in the tracing of Uebersee—frankly, I do not recall any.

Mr. Gallagher: My best recollection is that in tracing

this chronology, even though we are in effect
2560 presenting an anticipatory case, we did discuss the fact that in 1936 they were sold and in 1941 they were repurchased.

The Court: Of course, if you opened it up, I suppose the actual picture could be completed.

Mr. Burling: May we have until the luncheon recess to look at the record?

Mr. Gallagher: I join in that request that we have until then.

The Court: That will be all right.

I would like you also to consider the argument about Dr. Frankenberg's connection with it.

This actually has to do with some securities that were in question here, does it not?

Mr. Ingoldsby: No, Your Honor.

Mr. Burling: It has to do with the shares of the plaintiff.

The Court: That is what I mean.

Mr. Ingoldsby: Yes.

Mr. Burling: We have not vested the plaintiff; we have vested the plaintiff's assets; but the shares are the subject of that transaction.

The Court: That is what I mean.

Mr. Ingoldsby: That is correct.

I do not know whether Your Honor wants to
2561 hear me further at this time or wait until we check the record, but I have something more to say about it before you rule.

The Court: Go ahead.

Mr. Ingoldsby: I did not understand Your Honor.

The Court: Go ahead.

Mr. Ingoldsby: So far as these particular exhibits relate to Frankenberg being connected with Uebersee, we have never denied that and we have admitted all

along that Frankenberg occupied the technical position of managing director. All you have to do is look through our books and records and you can see that compensation was paid.

The Court: His activity of supervision over transactions might have some bearing on whether he was representing the father or the son. It might depend on the individual circumstance of each case.

Mr. Ingoldsby: I will pass that one.

The Court: I do not know just exactly what this shows.

Mr. Ingoldsby: I do not know what it shows, either, Your Honor—

The Court: I had the impression that Mr. Gallagher started to introduce some testimony about it. Then, after he got into it to some extent, he decided to
562 abandon it, and that is the reason he put that mark on there.

Mr. Gallagher: No, Your Honor. That was up there when we brought the chart in here.

The Court: Was it?

Mr. Gallagher: Yes. We had it on there.

The Court: You can check the record on it during the lunch hour.

We have had in this case a great many collateral transactions that were not objected to which, as I understand it, were offered by the Government to show that the plaintiff at least went through certain transactions with the idea of concealing some identities. I think Mr. von Opel admitted to one of them, as I remember it, about this attachment of his father's account; that he had in mind allaying some hostile action of the German Government; and this question about the passport. A great many of these matters might be collateral, but they were not objected to at the time they were offered; and I am very much inclined to let you argue the case

with them in and give you all the latitude you want in arguing that they are not persuasive or not relevant.

So much of this testimony went in without objection that it is a little difficult, right at this stage, to winnow—

out all the points in absence of a very full argument;

2563 so I am inclined to let all this testimony stand,

and I will admit these particular documents over your objection, and let you argue their weight or lack of probity. I do not want to make formal rulings on evidence at this time; I would much rather hear you.

That will save the record. I will admit these over your objection and hear you on that as part of your argument.

Mr. Gallagher: Could we have about a five-minute recess before argument?

The Court: Yes.

Mr. Burling: Before that, I do not believe the record showed the numbers. Defendant's 84 through 87, plus 109, which are the subject of Your Honor's ruling.

The Court: All right.

(Defendant's Exhibits for identification 84 through 87 and Defendant's Exhibit for identification 109 were admitted in evidence).

2649 APPENDIX

(The following is a stipulation between counsel for the plaintiff and counsel for the defendant with reference to the deposition of Mrs. Fritz von Opel):

Plaintiff and defendant agree that the deponent need not sign the transcript; and in addition, that after the transcript has been prepared by the reporter, it may be sent to counsel for defendant directly by special delivery

and need not be filed by the reporter with the Clerk of the Court. However, plaintiff will receive a copy of the transcript.

Let the record note that the taking of this deposition commenced at 10:40 a.m. and recessed at 1:40 p.m. The letters which the defendant had requested from Germany did not arrive until 2 o'clock. Subsequently, the taking of the deposition began at 3:30 p.m.

It is stipulated by the parties that Mrs. von Opel wrote a letter on April 28, 1937 to Mrs. Ruth Lengnick from which Defendant's Exhibit A is an excerpt, and that the letter may be identified as Exhibit E.

It is further stipulated by the parties that on November 18, 1939, Mrs. von Opel wrote a letter to Mrs. Lengnick from which Exhibit C is an excerpt, and the letter is to be identified as Exhibit F.

It is further stipulated that on December 24, 1940,
2650 Mrs. von Opel wrote a letter to Ruth Lengnick, an excerpt from which has been heretofore marked Exhibit B, and this letter is now hereby identified as Exhibit G.

It is further stipulated that Mrs. von Opel wrote a letter on November 20, 1939, to Mrs. Lengnick, in which she said, "The little master is in Hungary about some bauxite business. He is interested in some Hungarian geese—this time real ones with feathers." And it is stipulated that this letter can be identified as Exhibit H and the excerpt therefrom as Exhibit 1.

* * * * *

2911 Mr. Gallagher: Mr. Boland points out to me, and I think that I should recall to your attention, that this Defendant's 90 was admitted by Your Honor temporarily, because of the signature identification, and not as to what the contents of the letter itself were, because there has been no showing that the writer thereof was

working as a director or as an agent of Transdanubia or Uebersee.

Mr. Burling: Ordinarily, I would resent the interruption, particularly in view of the fact that there have been five or six motions to strike and other controversies
2912 concerning this document, but this time I do not.

I am glad Mr. Gallagher did interrupt me. I can make my argument a little more full.

May I have the document, please?

Mr. Boland: Your Honor, I do not like to get up on this point, but I have refreshed my memory very recently on the discussion with Your Honor on this exhibit, and it was very clearly stated by the Court that the reason for the admission of this particular document was on the basis of the fact that a letter was written, and Your Honor stated that whether or not that act of writing a letter constituted business would be left open for oral argument.

There was no question of admitting this document for the purpose of what was stated in the document itself. We had argued that it was hearsay. You said, "I understood, Mr. Burling, that you are offering this merely for the purpose of showing that an agent of Transdanubia wrote a letter, and whether or not the writing of a letter constituted business if a question for argument."

Mr. Burling: If Your Honor please, I will argue it once more. The testimony is that this document was written on the letterhead of Transdanubia, that Fritz von Opel positively identified the signature of Timar, that von Opel said that when he was last in Budapest Timar was one of the managers. The letter, in other words, is a letter
2913 which we know Timar signed for Transdanubia to Giulini Brothers.

There has been a rather involved argument about what the letter is admissible to prove, but I submit that once you have the document, signed by a manager of a wholly-

owned subsidiary corporation of the plaintiff, it is then admissible as an admission of the plaintiff as to what the facts are. The earlier debate related to other documents, largely, or to questions as to whether Transdanubia was doing business.

The Court: I do recall that the point that I thought you argued at the time you offered it was that the letter itself showed by its contents that it was a communication with some party in the pursuance of some business.

Mr. Burling: That is correct, Your Honor.

The Court: And therefore that the letter itself was an act. It was one of those contemporaneous acts which described the transaction. The recital of that act or a recital of some event which took place would not be admissible as to that particular act, because if the letter itself promoted or was in pursuance of the act, a discussion or recital on that act would not be evidence of the act itself.

Mr. Burling: Even though it was signed by a manager of the wholly-owned subsidiary?

2914 The Court: That was my impression of it. I told you I would let you argue it on any phase. That was the basis on which I admitted it. I told you you could argue it.

The point I had in mind was that sometimes a man, in writing a letter, even though it is a business letter by an officer of a corporation, might be making a totally inaccurate and misleading statement of the event, and it might be hearsay and it might not.

Mr. Boland: Your Honor, in addition to that—I have difficulty in finding the transcript—I am sure that you directed a statement to Mr. Burling along this line: "Mr. Burling, I understood that you are offering this to establish the fact that an act of writing this letter had been actually done by the corporation for that purpose alone." Mr. Burling said, "That is precisely the basis upon which we were offering it."

The Court: I was ruling on the admissibility of it. I did leave it open for both of you to argue whether it is hearsay or not. The point I was ruling on right then was as to its admissibility. It looked to me to be fairly admissible if you have an authentic document of a corporation which, in and of itself, by its officer and at a date which is fixed, is an act contemporaneous with a declaration or is a description of it. It is not exactly res gestae, but it is
2915 along that line. It is a spontaneous declaration; that is what it is. That is a clear exception to the hearsay rule.

Whether there are also admissible statements in the letter which recite an event which occurred in the past, I have some doubt about that. I am not sufficient familiar with that letter right now as to whether it has any such recital.

Mr. Burling: I agree in part with what Mr. Boland said. I did agree that one of the grounds of admissibility was that the mere writing of the letter to Giulini was the act of doing business.

The Court: Yes. I remember your argument.

Mr. Burling: I did not mean to limit myself.

I would now like to hand to Your Honor a document in translation and to argue that it is a recital, in very nearly technical bookkeeping terms, of the shipment of bauxite and of correction of shipping records, and that that being so, the statement of Timar, the manager of Transdanubia, which in turn was 100 per cent wholly owned by Uebersee, is an admission that bauxite was being shipped as recited in this document.

Mr. Gallagher: Your Honor, with respect to that, as you noted, it points out certain transactions taking place in 1941. As you also know, the record is uncontra-
2916 dicted in this respect—

The Court: I do not see that.

Mr. Gallagher: Yes. It reflects the shipments, as I recollect, in October, November, and December, of 1941. Is that not correct?

Mr. Burling: I think it would be much more orderly if each side could argue.

The Court: That is a little bit different. This is an absolute discussion of a business transaction between parties. That is a discussion between the parties of a transaction. That would come within the rule I am talking about. The only one I would have any doubt about would be the last paragraph.

Mr. Burling: I am perfectly willing to exclude the last paragraph from the exhibit.

The Court: That is the only thing. That is a recital of past events. I have no doubt about the others.

I will hear you on rebuttal. I can tell you very plainly what I have in mind. When you have a letter of a business organization in the regular course of business, written by one of its officers to another party, which interprets a transaction, or an alleged one, that tells the quantities in it, and things of that sort, and discusses how to treat it or how you will have the bookkeeping entries or how you will operate on it, I think that is a contemporaneous act. It is a statement in and of itself which is a part of the ordinary business.

2917

Now, there may be a distinction—I am not entirely convinced on this, but I had it in mind—when the writer begins to say, for instance, in this last paragraph, "We have vigorously urged, however." Now, what is vigorous and what is repeated, and all that business, comes in a different category. He is reciting something he did in the past. That is entirely different from the carrying on of the business as it is here in the upper part, where he said if we deduct this, the difference is so and so, and if the weight is added, the weight to be settled properly amounts to so and so. That is pretty close to doing business.

Mr. Gallagher: I would like to just remind Your Honor of one factor. This is not a document which has been shown to be kept in the regular course of business.

The Court: I think the inference is that it was. Here is the letter from a party—

Mr. Gallagher: It is from Germany.

The Court: It is a party who is an officer of Transdanubia.

Mr. Gallagher: We do not know that, Your Honor. We do not know if he is, after May of 1941, an officer
2918 any longer.

The Court: You are straining a little bit on that. Under the circumstances, you have a letter from an organization that you would normally deal with and had dealt with. You have the name of a party who, according to your own witness, was an officer of the outfit at the time, and he purports to be one right now of a company which the plaintiff controls. I think the circumstantial evidence is that it is in the regular course of business. You can prove it another way.

I have admitted the letter. I will leave out that last paragraph. I think the other is clearly within my ruling.

(Defendant's Exhibit 90 for identification was received in evidence.)

Mr. Burling: Your Honor, I might say, if Your Honor please, all that I now want to get out of the letter is the fact that there were these shipments of bauxite. The business which is referred to, and which this letter is a part of, I say goes to show that the mines were not leased. Transdanubia did not (A) lease the mines and then (B) produce bauxite out of them. If Transdanubia had followed von Opel's suggestion and leased the mines, then it would not have any mines to produce bauxite out of; and

I might say there is nothing in the record to indi-
2919 cate that the mines were leased other than Opel's suggestion that they be leased. There is nothing in the record, other than repeated statements or hints by counsel, that they were leased. The record is bare on this point except that long after the suggestion of Opel that they be leased, Transdanubia was writing, referring to shipments in considerable quantities which it had made, not its lessee.

As to Transdanubia itself, the record shows that it had a contract running into 1942 which von Opel negotiated, which was that it was to produce these 100,000 tons of bauxite. We have the letter which Your Honor has just ruled on, which shows that quantities were shipped in October, November, and December, 1941. We have the letter relating to these shipments in February, 1942, after the war started, dealing with clearance of accounts with Giulini relating to the shipments, the writing of which letter itself was an act of doing business. Then there is also the fact that the loan of 32,000 francs was repaid in November, 1942. So no argument could be made that Transdanubia was not doing business within Hungary during the war and was not an enemy.

Now, the remaining question is what relationship existed between Transdanubia—

The Court: Excuse me just a minute. Mr. Gallagher, for the record, I think probably, because of Mr.
2920 Burling's argument, I ought to make clear that I am not going to foreclose you from arguing contrary to his argument, that that letter is not admissible as showing transactions in October, November, and December, 1941. I will let you argue on that point. I am not ruling one way or the other on that proposition, Mr. Burling.

The thing I am ruling on—and I want the record to be clear on it—is that in so much as this letter apparently, to me, was written by an officer of Transdanubia and was

produced from the files of an organization with which Transdanubia did business, and the officer who wrote it was described as one who had been, at least, an officer, and now, apparently purports to be, as of the time of the writing of the letter, that fairly establishes the letter as having been written in the usual course of business; and that in so much as all of the paragraphs except the last paragraph of the letter constitute in and of themselves a discussion of some deduction and addition, that in and of itself is a deal, an act which tends to indicate one.

Now, whether it properly may be received to indicate that it was business in October, November, and December, 1941, I will let you argue that in reply. I will leave that in abeyance. But my definite ruling is that it is in evidence for the purposes that I have described with regard to all paragraphs except the last—I want to
2921 get the record straight on it—for what it is worth.

* * * * *

Now, going back a moment, I have said that the question is what the relationship between Transdanubia and Uebersee after the outbreak of war between the United States and Hungary or Germany. And here, except
2922 for the extension of credit which I have already spoken of, we find ourselves in a void, or, to change the metaphor, Transdanubia disappears into a haze and we just don't see it any more. There is no testimony in this record of an act of dissociation. There is no testimony in this record that Uebersee did anything to cut itself off from Transdanubia. There is no evidence that a corporate decision was made to have no further dealings with it. It just disappears.

Fritz von Opel and Frankenberg are in the United States after 1940 and they do not know anything about it at all. The Uebersee books are sent for, but no file on Transdanubia is shown at all, and the plaintiff did not see

fit to bring its books governing the years 1941, 1942, 1943—

Mr. Gallagher: I have to object. They are in as exhibits 141 to 154 and 174 to 176, down to the present date when they were sent here.

Mr. Burling: At any rate, there is no file indicating what happened to Transdanubia.

Meier, the president of the corporation, comes over here and he testifies that he hasn't kept the books for a long time; and Your Honor will recall my strenuous efforts to find out when he last saw the books, and he saw the books at some time after he first got them, but then he could not say when he first got them, and he could tell when he got them because he knew when he last had them, and
2923 he had them before he got them. That is the best we could get from him. He could not say when he last saw the books, although he thought he saw them at the time they were packed up to be sent here. But he does not know about the bookkeeping entries or the files relating to Transdanubia during the war.

Now, it seems entirely probable that somebody must have voted the Transdanubia shares at stockholders' meetings, but no witness who was called could tell us who voted the shares or even who decided not to vote the shares. Apparently, the plaintiff would have the Court believe that suddenly all its officers collectively suffered from amnesia and just forgot that they had a wholly-owned subsidiary corporation in Budapest with an investment of more than 100,000 Swiss francs in it. As a matter of fact, the only amnesia they do not seem to have with respect to Transdanubia is the carrying of the investment on the books until it was written off in 1946, but otherwise they seem to forget entirely their obligation to manage the property.

Your Honor will recall that Dr. Meier testified he felt obliged, since Frankenberg and Mr. von Opel were here, and von Opel was in the internment camp, to look after the investments; and then Your Honor will recall my to-

tal inability—my total failure—to find out what it
2924 was that Meier did, what act he took, what decision he made, in supervising the Transdanubia investment. He finally admitted, under my persistent cross-examination, that Uebersee supervised Transdanubia; but what that supervision consisted of we never found out at all.

Now, yesterday morning I accused Mr. Gallagher of using an old lawyer's trick of the missing witness. Your Honor will recall that he wanted to know why we didn't call von Klemm, and the vice president of Spur, and he read off a list of directors of Harvard Brewery, and why didn't we call Hoffacker, and Ulrich, and even Isadore Kresel, instead of calling the witnesses that we did call who testified to such effect. And I say that that is a trick that you see in a lot of lawsuits. Whoever the lawyer calls, his opponent says, "Why don't you call somebody else?" and I do not desire to open myself to the same charge, but I do think I am entitled to ask what Henggeler, and later Gaeng, did with respect to Transdanubia.

Your Honor will recall that there were three directors of Uebersee, one of whom was Frankenberg, who was therefore inactive during the war because he was in America. Then there was Meier, who testified here that he did not know anything about it at all. Then there was Henggeler, who was succeeded in 1942 or 1943 by Gaeng.

Since Frankenberg and Meier knew nothing about
2925 what happened to Transdanubia, it must be that Henggeler and Gaeng are the men who know where it went; and when my friends have the burden of showing that Uebersee did nothing whatever with respect to the management and supervision of Transdanubia during the war, I submit that it is not enough for them to call two of the fore possible men and have them say they know nothing about it. This, it seems to me, is a problem of negative proof, and to negate the presumption that somebody in

Uebersee managed Transdanubia, they should call all the officers or else suffer the inference that the officer they do not call is the man who did it.

I want to say again, on the face of this record, Transdanubia is not cast off by Uebersee. No corporate decision is reached by an officer to do nothing about it during the war, just to let it sit. No act of dissociation takes place. It just vanishes from the mind of men. It is a will-o'-the-wisp. Now we see it, now we don't.

Let us suppose arguendo that at some time the officials of the plaintiff corporation did decide to give up or write off or dissociate themselves and Uebersee from Transdanubia. That would be an affirmative act which somebody would have to take. Somebody would have to reach a decision. But there is nothing in this record that shows that anybody ever reached that decision. Von Opel states that

2926 he decided not to invest any more money and that he suggested that the mines be leased. But it is clear that after that he was still interested in the property, because he was interested in the royalty that would be paid if the mine was leased.

Surely, when Transdanubia was able to pay back the 32,000 franc loan in the fall of 1942, that told Henggeler, who had been handling the extension of the guaranteed loan, that the company was doing better. They must have known that it was making money. Is it reasonable to suppose that Henggeler and Gaeng never thereafter even inquired as to what Transdanubia's profits were in 1942, 1943, 1944, and 1945? Weren't they curious to know how the bauxite production was coming on? Didn't they want to know whether Giulini had renewed the contract at the end of 1942? Didn't they want to know if they could expect dividends? What did happen to Transdanubia? Where is the file of papers which the Transdanubia officials must have sent Uebersee? I say that the plaintiff has totally failed to bear the burden of proof that Uebersee cut itself off from Transdanubia.

I am well aware that the doctrine of res ipsa loquitur does not directly apply here, but it suggest an analogy that I would like to suggest to the Court. Supposing—and I hope this does not happen—Mr. Gallagher were walking by my house and the window were open and a brick
2927 sailed out the window and struck Mr. Gallagher on the head, and Mr. Gallagher were then to bring suit against me, and I would take the stand, like Meier here, and I testified, "Gee whiz, I don't know how that brick came to fly out the window. I know nothing about it," and then the defense rests. I feel quite sure that Your Honor would direct a verdict for Mr. Gallagher.

Put another way, I do not think it is enough for the plaintiff, once it is shown that it was actively managing Transdanubia and that Fritz von Opel had negotiated a contract for it to ship the 100,000 tons of bauxite, and once it is shown that plaintiff was assisting in the financing of the corporation and that Transdanubia was successful producing bauxite, to say, "Gee whiz, we don't know what became of Transdanubia." They have got to explain what became of it.

I think, in order for the plaintiffs to be successful in this line, it would be necessary for them to prove a decision to abandon and a severance of ties with Transdanubia, or else and at least, to call all the officer witnesses who could have acted, and to have them say that none of them took any action with respect to Transdanubia.

Now, plaintiffs will argue that this is a question of negative proof, and that that is a hard kind of proof to establish; and I admit that, but, nevertheless, that is the
2928 burden that they have as a matter of law. They do not meet that burden of negative proof by calling one of three directors of Uebersee who resided in Switzerland during the war and have him testify that he personally never did anything. I say that the burden is not met until everyone who could have acted on behalf of

Uebersee in relation to Transdanubia has testified that he did not so act.

In this connection, it is interesting to note that there is a stipulation between the parties as to what Henggeler and Gaeng would testify to if they were called as witnesses by the plaintiff. In the stipulated testimony, however, there is not one word about what they did or did not do with respect to Transdanubia. It is also noteworthy that the record shows that the one official who, during the war years, did in fact do something with respect to Transdanubia, namely, directed Adler, who extended the guarantee, was not called, whereas the one officer who was called—other than Frankenberg who admittedly was out of the picture—Meier, said he had not had anything to do with this and apparently had not had anything to do with the guarantee.

In conclusion, I say that it is obvious that unless the plaintiffs satisfy Your Honor that they did not do business with Transdanubia, that they cut themselves off from Transdanubia at the outbreak of war with Hungary, then they were doing business, through their wholly-owned subsidiary in Hungary, namely, the mining of bauxite—that is, business within an enemy territory—and if they do not so satisfy Your Honor, they fail, because the plaintiff corporation is an enemy.

2929

The Court: Your position on the Supreme Court case cited by Mr. Connor is that that only dealt with evidence of the total ownership of the shares?

Mr. Burling: Yes, Your Honor; that is, bare ownership.

The Court: And that there was no affirmative act?

Mr. Burling: Candidly, Your Honor, I am not familiar with the case. I suppose I should have been. I have been in this—

The Court: Well, he did argue the Supreme Court case. I took a note of it myself, and I understood his argument was that the Supreme Court had held that where the evidence was solely that one corporation held all the cap-

ital stock of another, that was not sufficient to make out responsibility on the part of that corporation for the acts of the subsidiary. Was that the effect of it?

Mr. Connor: It was a service of process case, Your Honor.

The Court: I understood that it was on the service of process, as to whether they were doing business in
2930 a certain community. I know your answer to it.

Mr. Burling: My answer is that I conceded that point and therefore did not look up Mr. Connor's case. I agree with him.

The Court: That is what I say. You say we have some act beyond that?

Mr. Burling: I say two things. One is we have some acts which affirmatively we proved and, secondly, we have a great many acts before the war which raise a presumption of continued ownership which is not overcome.

The Court: Yes. All right.

Mr. Gallagher: I know it has been a pretty hard day, but if we could have perhaps a five-minute recess, I think Mr. Connor might be able to finish this entire portion in 30 or 40 minutes, and then he would be free.

The Court: I do not mind sitting until 5 o'clock, but I do not believe I can run much beyond that.

Mr. Connor: If Thursday would be at all possible to Your Honor—

The Court: I think the new matter that Mr. Burling has brought out, if you can answer it, deals with only two propositions, I mean new matter. You have already argued at length the economic proposition and the other and this control. The two things that he has brought out that I have noted particularly were, first, he says that the def-
2931 inition of the act itself indicates that the putting up of security or the extension of security—I do not know whether it was extension or not; it was the putting up of security—would constitute doing of business.

That is point number one, in effect, that he brought out that was new. The second point was that in the ordinary course of business it would be anticipated that Transdanubia would continue with its business, and that Uebersee would continue as it had before in supervising it and carrying it on, and that the burden is on you to show the contrary.

Those are the two big points that he has brought out, other than refuting what you have argued. If you can cover those in a half hour, I will be glad to hear you.

Mr. Connor: I had also in mind most particularly replying to Mr. Baum.

The Court: I had understood Mr. Boland was carrying that.

Mr. Boland: No, Your Honor. If you recall, I covered it very briefly and made reference to the fact that Mr. Connor was going to cover that.

The Court: How much time do you want except for Mr. Connor?

Mr. Gallagher: I would say, with the exception of Mr. Connor, perhaps a maximum of two hours, possibly an hour and a half, for Mr. Boland and me, Your Honor.

2932 The Court: You mean the whole matter can be concluded in two and a half hours?

Mr. Gallagher: Rebuttal for the plaintiff in about two hours.

The Court: Why do we slice it up? Why don't we hear it all Thursday morning?

Mr. Gallagher: That will be fine.

The Court: I would like to get through, if we possibly can, by the noon recess Thursday, because I have got to go into some important cases not later than Tuesday of next week, and I want to do much work before then.

We will go over until Thursday morning. I have to receive a verdict, but that won't take long, about ten minutes. Let us try to see if you can get through by 12:30.

(At 4:30 p.m. an adjournment was taken until Thursday, January 27, 1949, at 10 a.m.)

* * * * *

2935 PROCEEDINGS

The Court: All right, gentlemen, I think we are ready to proceed in the Uebersee argument.

DISCUSSION REGARDING DEPOSITION OF MARGOT VON OPEL

Mr. Burling: If Your Honor please, Your Honor will recall that there was some rush in the deposition of Margot von Opel, and we read a transcript which was prepared by Mr. Gallagher's secretary rather than wait for the official report.

The Court: Yes.

Mr. Burling: The official report is now here, and there are four lines that I find were not correctly read before. I would like to read them into the record.

The Court: I think that is all right.

Mr. Burling: Page 4. The original question is in the record, but the answer, then the next question, and the next answer are either omitted or garbled:

"Question: How did you know that Mr. von Opel was going to have a conference with Dr. Frankenberg in Duesseldorf?

"Answer: Because he told me on the phone, perhaps, that he had planned to do so. I don't know.

"Question: Mr. von Opel had told you; is that
2936 correct?

"Answer: Obviously; I would not have made it up."

The Court: All right.

* * * * *

The Deputy Clerk: Uebersee Finanz-Korporation v. Clark.

The Court: All right.

Mr. Gallagher: If Your Honor please, I do not know exactly what procedure you want us to follow today, but in the light of suggested changes that the plaintiff has made to the Court's tentative findings, Mr. Boland and I have broken them down along the lines and in the way in which we handled the plaintiff's case in chief. If you agree, Your Honor, we should like to break down the findings individually as we go along.

The Court: I am wondering if it would not be helpful to me for you to express each one and then let Mr. Burling answer it as we go along.

Mr. Gallagher: That sounds very good.

Mr. Burling: I would prefer to answer each one as it is taken up.

The Court: Yes. Let us do that, then.

Mr. Gallagher: Mr. Boland will handle the suggested change of finding No. 4.

Mr. Boland: Your Honor, do you have a copy of our proposed changes before you?

The Court: Yes, I do.

Mr. Burling, in case there isn't any objection to any of them, will you let me know before the plaintiff's
3056 counsel starts to argue?

Mr. Burling: I am afraid, Your Honor, that there is objection to every one of them.

The Court: All right.

Mr. Boland: The first finding, Your Honor, is finding No. 4, and the main reason for the change in our proposed amended findings is in respect of Mrs. Elinor Sachs, the sister of Fritz. The record shows merely one thing in respect of Mrs. Sachs, and that is that she is residenced in

Switzerland. The record is barren of any evidence to show that she was residenced or domiciled in Germany.

At the time of presenting our case, we were not aware of the fact that Mrs. Sachs was an element or an issue in this case. Had we been so aware, we would have put on evidence to show that she has been domiciled in Switzerland for the last 17 years. This is extremely important to us because Your Honor will recall that our legal position is that under the Trading-With-the-Enemy Act, specifically under Section 2 of that Act, a non-resident German citizen is not an enemy within the definition of section 2, unless by Presidential proclamation such persons are so declared. You will recall that during this war no such proclamation was made by the President.

Therefore, from the standpoint of an appeal, it becomes very important to us, having taken the position that
3057 a non-resident German citizen is not an enemy, to have either a finding that Mrs. Sachs has been domiciled in Switzerland, on the basis of what is in the record, or that reference to her as an enemy be limited merely to the fact that she is an enemy on the basis of citizenship regardless of domicile. That may seem quite confusing, but that is the point we have in mind.

Specifically, the main reason for our objection is that there is no evidence to the effect that she has been residenced in Germany. The only evidence in the record shows that she is residenced in Switzerland. The reference to that is pages 51 and 52 of the record.

Mr. Burling: If Your Honor please, the record is silent as to the sister's present domicile. The record does establish, of course, that she acquired domicile by birth in Germany. Whether she lost that domicile is a matter of German law or Swiss law. The record does not state. It leaves her domicile in Germany. So from the record the conclusion that she is domiciled in Germany is proper.

I do not mean to be coy with the Court. We did interview her in Switzerland. We know that at some point she has been in Switzerland. If we are going to go outside the record, we understand the facts to be that she ran away from her husband and that at least part of the time she has been living in Switzerland.

3058 The Court: I cannot go outside the record. You say Mrs. Elinor Sachs, nee von Opel, the sister of Fritz von Opel, was born in Germany. What does the record show on that? Does the record show that she was born in Germany and lived there or was domiciled there until her marriage?

Mr. Boland: No; the only thing the record says about the daughter is in connection with the questioning of the father—the deposition of the father—on page 51.

"Question: Do you have any other children?"

"Answer: I have one daughter living in Switzerland."

But for that, there is no other reference made to Mrs. Sachs.

Mr. Burling: I think that is correct; but when I said the record establishes that she was domiciled in Germany, I meant to say the record establishes that the parents were at all times domiciled either in Wiesbaden or Ruesselsheim, Germany.

The Court: The only part that that would have to do with would be this reversionary interest; is that right?

Mr. Boland: Yes, Your Honor; that is the only place it comes out. In discussing enemy taint in your opinion, you spoke of the fact that she probably would be one who would inherit in the event of reversion subsequent to the death of the mother, and that she being an enemy, that enemy interest caused taint of the plaintiff corporation.

3059 The Court: Of course, I am held by the record.

Mr. Boland: As a matter of fact, Your Honor, I can say this truthfully, that we are not aware of whether or

not Mrs. Sachs is actually a German citizen at this time. The last time Fritz von Opel was in contact with his sister was in 1940.

The Court: If we both agree that the record shows that the only evidence is that she is a sister of Fritz von Opel and is a resident of Switzerland, that is all I can find. I am bound by that. Then, I will just change my finding in this way:

"Mrs. Elinor Sachs, nee von Opel, is the sister of Fritz von Opel and is a resident of Switzerland."

Mr. Boland: All right.

The Court: I don't know whether there would be any point in writing a supplementary opinion saying that. I don't know whether it has anything to do with it or not. It would not change the result. In my judgment, it would not. It would give you something to argue. I will look that over.

Mr. Gallagher: The next requested change, Your Honor, is with respect to tentative finding No. 6. I believe that the plaintiff's proposed amended finding states accurately and exactly what the record reflects. That is shown from particular reference to page 1435 of the record. To refresh

3060 your recollection, Mr. Burling asked, during the course of the trial, that Mr. von Opel break down the time during which he had made visits to the United States and had resided in Switzerland and had gone to Germany.

Mr. von Opel's compilation reflected that approximately 35 percent of the time was spent in the United States, 35 percent of the time in Switzerland, 9 percent in Germany, and the remaining time traveling elsewhere.

Even under Mr. Burling's own compilation, I believe, if I am correct, he would have had a figure of 11 percent as the amount of time Mr. von Opel spent in Germany during the years from the date of his departure.

The Court: Let me see if we can cut this short. There may be some significance to the word "permanently." Why not say:

"After December, 1929, Fritz von Opel never lived continuously in Germany but lived successively in the United States, Belgium, and Switzerland, where in 1934 he became a Swiss domiciliary. Between December, 1930, and August, 1939, he went to Germany for short visits."

Wouldn't that be right?

Mr. Gallagher: Well, Your Honor, with respect to the fact that you would change it to "He never continuously resided," while that is more accurate, we believe, than the present finding, nevertheless, he never had, as you recollect from the record, any residence whatsoever where
3061 he resided. He had no home or apartment at any time from 1930. He was out of the country from 1929 to 1930, in the United States. He never had an apartment or a home, and the only place he ever stayed was at, basically, Sylt, where he went to visit on a few occasions in the summer. Other than that, he made some visits to his father's home in Berlin. The man never maintained any home or apartment in Germany.

The Court: You might say he never maintained residence in Germany; but to say he never resided has a meaning which in law is treated in various ways. We have a residence here in the District of Columbia for one purpose and have a residence somewhere else for another. It just depends upon the purpose of it. That is a legal term. You might say he never maintained a place of abode in Germany, unless there is some evidence—

Mr. Burling: We contend there is.

Mr. Gallagher: We are not asking for a finding that he never resided in Germany. Our finding merely states that he left Germany permanently in 1929 and lived in the United States, Belgium, and Switzerland, where in 1934 he

became a Swiss domiciliary. Between December, 1930, and August, 1939, he occasionally went to Germany for short visits. That is what the record reflects.

The Court: I have that myself.

Mr. Burling: My principal objection is to the word
3062 "permanently." I agree except that such residence as residing in a house rented by his wife on the island of Sylt does not show any legal residence in Germany. But I object to the plaintiff's use of the word "permanently," because I think it is ambiguous. It suggests intent to leave his residence in 1929.

The Court: How about striking out—

Mr. Gallagher: "Left Germany and lived successively in the United States—"

The Court: "After December, 1929, Fritz von Opel never resided in Germany but lived successively in the United States, Belgium, and Switzerland."

I don't know about the next clause.

Mr. Gallagher: The record will show, and I think the Government will concede, that subsequently, from 1934 on, he became—

The Court: From 1934 he became a Swiss domiciliary. Between December, 1930, and August, 1939, he went to Germany for short visits.

Mr. Burling: If the "short visits" has any significance, would Your Honor add to his finding, "totaling about 10 percent of his time"?

The Court: All right.

Mr. Gallagher: No objection to that.

The Court: Ten percent of what time?

3063 Mr. Burling: Ten percent of the time between the date of the gift and his departure from Europe.

The Court: Maybe that will do it.

"Between December, 1930, and August, 1939, he went to Germany for short visits totaling about 10 percent."

Mr. Boland: The next finding, Your Honor, is finding No. 7, which has to do with the Liechtensteinean citizenship of Fritz von Opel. It seems that findings Nos. 7, 8, and 9 fall more or less in the same category, generally, with respect to what I am going to say.

The Court: Mr. Boland, I do not think I can find that his purpose in acquiring Liechtensteinean citizenship was his desire to sever his ties with Germany. I feel pretty definitely that his purpose was to get membership in a neutral country, that would make possible some of the things he is trying to do now.

Mr. Boland: Your Honor, the record shows, in Mr. Henggeler's affidavit, if you recall, specifically that Fritz and Margot von Opel wanted to renounce their German citizenship, and Margot von Opel, who was a Government witness, testified that they wanted to renounce.

This aspect of the purpose for which he acquired his Liechtenstein citizenship is going to be argued by Mr. Gallagher. Just basically I might state that at the time all these questions came up about Liechtenstein, you will
3064 recall that we made serious objection to questions being asked as to what the color of the Liechtenstein flag is, what date they last had their constitution revised, and so on and so forth.

The purpose given by Mr. Burling at that time was as an indication that perhaps the manner in which the citizenship was acquired would lead this Court to the conclusion that Fritz von Opel had in fact applied to the German Government for the retention of his German citizenship, and that was the purpose for which these questions were asked.

However, when we read Your Honor's opinion, we saw that the purpose had been turned into a question of allegiance and fealty. Had we been aware of the fact that Fritz von Opel's allegiance had been in issue in this case, we may rest assured that we had more than several wit-

nesses to bring here on the question of allegiance. As a matter of fact, we have before us some twenty-three affidavits on the allegiance of Fritz von Opel by outstanding people, such as General Eichelberger's brother, who was commandant of West Point during the war, and by the author of All Quiet On The Western Front. All those affidavits were in the hands of the Government.

But it is unquestionable, from the standpoint of the allegiance of this man, that had we known of his allegiance being in issue, we would have brought witness after witness—Jewish refugees who were here, and subse-
3065 quently became United States citizens—to attest how this man felt about the German Government.

As a matter of fact, it seems to me clear that the whole purpose of Fritz' leaving Germany and remaining away and acquiring Swiss domicile after the Nazis came to power in 1934 could only be for two purposes: either that he was disgusted with the Germans and wanted to stay in Switzerland and stay away from Germany, or that he wanted to maintain this credit that he had in American currency and keep it away from the Nazi Government.

The Court: Let me tell you the way the man impressed me on the record. I would have thought that most anyone else would agree to this situation. When you try to determine enemy taint, you don't look only to the cloak of citizenship that a man carries. Hitler might have taken out Liechtensteinean citizenship in order to accomplish several or certain of his decisions. He might have done it. Yet if he came in here immediately after the end of the war and claimed that he was a type of citizen, we would certainly say he had taint because his fealty was to Germany. It seems to me that that is one circumstance to be taken with every other circumstance in the case, not by way of an absolute bar. I mean I never did reach that point, but I am recognizing for the purposes of this case, tentatively at least, that going through that formal proposi-

tion that is effective under the laws of Liechtenstein,
3066 would give him a right to keep the money, provided you did not have other circumstances in the case that showed him hanging onto that property, with a tendency to clear it back into Germany. That is the way I dealt with it.

It seems to me, as I remember it, although you complained about the testimony to some extent, that the father was close to Hitler, and Fritz was close to his father, and he made certain—at least, I found in my own mind that he made certain statements, that it would be a short war if one came, and he would have a part in devising these bombs. He had been reared in that country. You would expect him to love it. That is not against him. I would love my country if I had been in it for 30 years.

With all that tendency, notwithstanding the cloak of citizenship, there was taint. That was the manner of my approach to it. He was well thought of in Germany. He was a sportsman and represented them. He made his fortune there and had relatives and friends there. His father was at least subservient to Hitler and that regime and prominently displayed it. The most natural thing in the world is that he would have fealty to his country. That did not condemn him at all, but, along with the other facts in the case, it showed enemy taint. That is the only way I dealt with it. That is the way I wrote it.

If that stood alone, the mere fact that he maintained
3067 an affection for his country and his parents and everybody who was over there—all his relatives—if that stood alone, and he was a citizen of Liechtenstein, it might very well be that he would not be barred from recovery. I did not pass on it one way or the other. I left that out. But that did seem to me—that meaning along with all these other facts—to go to make up what the Supreme Court calls taint.

Mr. Boland: The Supreme Court in discussing the question of enemy taint was discussing a corporation. That was the problem involved before the Supreme Court—namely, this corporation; and prior to the decision in our case in the Supreme Court—

The Court: It is corporate securities. That is the taint. It is property taint.

Mr. Boland: Yes.

The Court: If the owners are tainted, then the property is tainted.

Mr Boland: The problem presented to the Supreme Court was, namely, this: whether or not, for a Swiss neutral corporation—whether you could go behind the corporate veil and see who was actually running it. Having decided that the corporation was owned and controlled for economic warfare purposes—a Trojan Horse exclusively—Congress must have intended that that sort of set-up could not prevail and that you should be able to look through the corporate veil.

3068 The Court: That is right.

Mr. Boland: However, I think the Government will agree that the Supreme Court had no question of lifting the citizenship veil or of going into the subjective mind of each and every individual in the United States from all over the world, saying, "Well, you are pro-Italian, and Italy was an enemy of ours during the war; and you are an American citizen, or a British subject; you can't get your property back."

That was not the issue.

The Court: Of course it wasn't. They said that enemy taint had not been defined. But when you determine it, you take every single, solitary element. When you look into a proposition of that sort, you take every tendency. Standing alone, as I said, it may very well not be enough. I did not decide that. But taken with a whole lot of other facts, it would be.

Mr. Boland: There has never been a case in the history of the Trading-With-The-Enemy Act, both our own or the one from which it was copied, the English or British Act, of an individual who is a citizen, and by his citizenship goes under the Enemy Act—the courts have never looked into the subjective system of the individual and said, "You are barred from recovery." That has never been in issue.

The Court: No, and it is not controlling here. But let us use Hitler as an illustration. Let us say he took
3069 out Liechtensteinean citizenship, and let us say that that was all there was to it, and that he is a valid citizen under the laws of Liechtenstein. Then you would have one question, which is not the question in this case, as I determine it, certainly. But suppose you had Hitler taking out Liechtensteinean citizenship and then having property partially owned by his brother or his son, who is plainly a citizen of Germany, and that he had a controlling and very positive interest in it, and then you had a reversionary situation, and then you had this very corporation which claimed to own it, which had a subsidiary digging out material which was of help to Germany. Let us assume all those facts.

It certainly would be proper to show that Hitler had been dictated to there.

What we have to do in determining taint is to find out whether there is a tendency on the part of the holders of this property to take it back into Germany and to frustrate the whole purpose of this Trading-With-The-Enemy Act. Then you have to look at all the circumstances, not just that one standing alone. That is the way I approached it.

Now, I do not see how I can possibly hold that his acquiring that citizenship was to sever ties with Germany.

Mr. Boland: Mr. Gallagher is going to argue per se the allegiance aspect, and the one thing I want to call Your

Honor's attention to in findings 7, 8, and 9 is the fact
3070 that the manner in which Fritz von Opel acquired his citizenship by the payment of money is a speculative study of the statute. The way the finding is made, it would appear that Fritz von Opel through some devious method had paid for citizenship, which, of course, is obnoxious to the American mind.

The Court: Where is that finding?

Mr. Boland: You made that finding in your opinion about the payment of money.

The Court: I did not mean that. What do you want me to say in that regard?

Mr. Boland: As a matter of fact, Your Honor, it seems to me if your position is that a person having acquired citizenship through normal channels and normal means, and having the tendencies which you attribute to Fritz von Opel, would lead you to the same conclusions as you have come to in your opinion, then Fritz von Opel, having acquired his citizenship in the normal manner under the statute, that might well make the findings there of no significance.

We can point out specifically, for example, finding 8, in which you say that it took a special act of the legislature. Actually, Exhibit 177, which is the Act of Liechtenstein, says specifically that no one who is naturalized—acquires the citizenship through naturalization—can acquire that until it is approved by Act of Parliament. That
is not any unusual circumstance, nor is it a special
3071 act of the legislature for Fritz von Opel which is out of the ordinary. It is provided for in the Act.

The Court: No. 7 is all right.

"On November 21, 1939, Fritz von Opel was naturalized as a citizen of Liechtenstein; however, the only times he was ever in Liechtenstein was when he was traveling through it. He has been in the United States since 1940."

Mr. Boland: Yes.

The Court: That is all right.

Mr. Gallagher: With one clarification, if I might suggest it, Your Honor, with No. 6, to the effect that the Liechtenstein naturalization law expressly permits the principality to waive the condition of residence—which it does.

The Court: Is there any objection to that?

Mr. Burling: Yes, Your Honor. If I may address myself a little more particularly to the significance of citizenship, I agree with Your Honor as to enemy taint. Of course, the factor of Fritz' fealty to Germany is a factor to be considered as one of the things making up enemy taint. I also think that the obviously quasi-fraudulent nature of his Liechtensteinean citizenship, the fact that it was a bare legal technicality, and the buying of the passport, as he said to Houghland, strengthen the quality of German nationality, whether or not Your Honor finds that he was still technically a German citizen as well as a Liechtensteinean citizen.

3072

Of course, his acquisition of Liechtensteinean citizenship was highly abnormal. He himself testified as to the amount of money he paid; and putting that against the annual budget of the principality—the government—he paid something like 3 percent of the entire revenue of Liechtenstein that year.

Mr. Gallagher: I hesitate to interupt, but Mr. Burling carried that throughout the hearing. Mr. von Opel pointed out very clearly that when he took the percentage of the total budget, he took the amount that was paid to Planken, which was the municipality, which is two-thirds of the price that was paid.

Mr. Burling: Then, taking that one—

Mr. Gallagher: And that mathematically it comes to the percentage which Mr. Burling gave for the total budget figures. Mr. Burling gave—

Mr. Burling: May I continue without interruption?

If we talk about Planken, von Opel paid $70 for every man, woman, and child living in Planken. It would have been the equivalent of paying $70,000,000 to acquire residence in the District of Columbia.

Of course, Liechtensteinean law, for the purposes of getting revenue, does contemplate exceptions, but it is
3073 normal procedure, which did call for residence both in the community and in the principality.

One exceptional feature, however, in von Opel's case was that he paid this enormous sum of money.

The Court: What is your specific objection to the statement that the Liechtensteinean naturalization law specially permits the principality to waive the condition of residence? Is that a correct statement?

Mr. Burling: "Under extraordinary circumstances." The law is section 6-D. Citizenship may be granted if they have had their permanent residence in the principality of Liechtenstein for at least 3 years; but this condition is not to be fulfilled under extraordinary circumstances, but to ask for special consideration.

The Court: "The Liechtensteinean naturalization law expressly permits under extraordinary circumstances."

Mr. Gallagher: We have no objection to that.

The Court: Now, here is the way I am going to fix this No. 7 and the way I am going to find it:

"On November 21, 1939, Fritz von Opel was naturalized as a citizen of Liechtenstein; however, the only times he was ever in Liechtenstein was when he was traveling through it. He has been in the United States since May, 1940. The Liechtensteinean naturalization law expressly permits under extraordinary circumstances the
3074 principality to waive the condition of residence."

Mr. Gallagher: If I might have just a word to say at that point. With respect to the purpose, the line that we requested, "Fritz von Opel's purpose in acquiring Liechtensteinean citizenship was his desire to sever his ties with

Germany," I submit with respect to that line that the record is absolutely uncontradicted. There is Henggeler's statement, which Mr. Burling referred to, as to the reason why he acquired Liechtensteinean citizenship. That is shown from Plaintiff's Exhibit 49, and I would like to refer to that for just a moment, because in your opinion you made a comment at page 7 also to the effect that until November, 1939, von Opel never had made any attempts to change his citizenship. Well, we submit, Your Honor, that the record reflects quite to the contrary.

Plaintiff's Exhibit 49, which is the Henggeler affidavit, shows that on repeated occasions prior to the war Fritz von Opel discussed the question of acquiring Swiss nationality with Mr. Henggeler. Henggeler goes on to say that after the outbreak of the war Mr. von Opel came to consult him again on this matter and repeated to him that he did not approve of the political attitude of Germany.

Therefore, this affidavit of Mr. Henggeler's, which is in evidence, constantly repeats the fact that Fritz von Opel explained to him that he and his wife wished to renounce their German nationality because they did not approve of the political set-up in Germany.

3075

In addition to that, Mrs. von Opel, whose testimony I know you will recollect—

Mr. Burling: You inadvertently read the affidavit incorrectly.

The Court: I do not want to take up a lot of time on this, because frankly—what is it I said about not until 1939?

Mr. Gallagher: In your opinion you said it was not until November, 1939. That is in your opinion.

The Court: All I said was:

"* * * In November, 1939, Fritz von Opel, formerly a German citizen, became naturalized under the laws of the Principality of Liechtenstein * * *"

I did not say it was not until 1939.

Mr. Burling: In any event, that is what Henggeler's affidavit says. Mr. Henggeler's affidavit reads:

"Mr. von Opel has during the years since the outbreak of the war repeatedly asked me my advise with regard to obtaining Swiss citizenship."

Mr. Gallagher: I think you will agree with me if I point out that that is an error that a foreigner would make in using the words "since" and "before."

The Court: Let me get what you say is wrong. I
3076 have got to get this in my mind.

Mr. Gallagher: First of all, in your opinion you said:

"* * * It was not until November of 1939, after World War II had begun, that Fritz von Opel took any steps to change his citizenship."

The Court: Where is that?

Mr. Gallagher: I believe that is on page 10 of your opinion, as I have it typed here—the top part of the page, about ten lines down.

The Court: That is right.

Mr. Burling: That is what the record shows.

Mr. Gallagher: I submit it absolutely does not, Mr. Burling. You are standing on the word in the second paragraph in the affidavit.

If you will just bear with me a moment to clarify this, Your Honor, foreigners use the words "since" and "before" mistakenly many times. You will find that is true among foreigners. You will find it with the Spaniards. I will show how they have used this thing. You will see when you read the contents. The second paragraph of Henggeler's affidavit says:

"Mr. von Opel has during the years since the outbreak of the war repeatedly asked my advice with regard to obtaining Swiss nationality."

I say that that word "since" is "before," for the following reason: He goes on to point out what the require-
3077 ments were to become a Swiss. Now, further he says:

"After the outbreak of war, Mr. von Opel came to consult me again in this matter and repeated to me that he did not approve at all of the political attitude of Germany."

I submit that that paragraph shows clearly that Mr. Henggeler in using the word "since" used it interchangeably as foreigners mistakenly do in translating "since" and "before."

If there were any question, or if we had thought your Honor was going to make a finding that that was the first time that Fritz von Opel had made any endeavor to change his citizenship, we would have introduced further testimony, because Mr. von Opel in the middle 30s had an immigration visa to come to the United States. That is out of the record, I admit.

The Court: He did not take any steps except to talk to Henggeler.

Mr. Gallagher: As far as the record reflects, he tried before the war to become a Swiss.

Mr. Burling: The record does not reflect that.

Mr. Gallagher: This affidavit does.

Mr. Burling: This is a fantastic waste of time. The affidavit says that since the outbreak of the war von Opel has done something.

3078 Mr. Gallagher: I will show the affidavit to Your Honor (handing a paper to the Court).

The Court: What I am trying to get at is even if he did talk to Henggeler before, it would not be taking any steps; it would be a discussion.

Mr. Gallagher: That is not a matter in issue. I am merely pointing out that in your opinion—it is not in your findings—you make that statement which we feel from Henggeler's statement is not accurate.

The Court: I think this finding of fact I make here does not deal with that subject matter, and if the opinion is contrary to the evidence in the case, then you can argue that to the Court of Appeals. That will be in the record.

Mr. Gallagher: All right, Your Honor.

The Court: I won't make any finding on the subject at all other than this opinion. I will leave No. 7 the way I have it. Do you understand how it is now?

Mr. Boland: Yes, Your Honor.

The Court: Now, let me turn to No. 8 for a minute. Mr. Burling, have you No. 8 there?

Mr. Burling: Yes, Your Honor.

The Court: See if you can follow this:

"Fritz von Opel's naturalization in Liechtenstein was accomplished under a waiver"— Would that be all right?—

"a waiver of the usual naturalization laws."

3079 Mr. Burling: I have no objection to that.

The Court: I think it is probably a little better than the way it is.

Mr. Burling: I have no objection.

The Court: "which provide for extensive residence." How about a period there? Was there a special act required?

Mr. Gallagher: For all naturalized citizens. Anyone who was naturalized in Liechtenstein had to be approved by the Parliament.

Mr. Burling: But anyone who does not take the oath of allegiance, who does not even come to the country—

The Court: Why don't we say:

"Any person who does not take the oath of allegiance under the laws of Liechtenstein"

would have to do what?

Mr. Burling: The waiver had to be granted by the Parliament in his case. It is true that even if you comply

with the ordinary law, Parliament must approve the naturalization; but where this extraordinary cause comes in, then I believe Parliament determines the existence of that.

Mr. Boland: The statute itself says nothing about a special act being required in respect of extraordinary circumstances. If you recall, at the time we had Dr. Kaufmann, we tried to get him to testify as to what the
3080 law or custom was over there, and the custom is that if you reside in Switzerland, that is an extraordinary circumstance.

The Court: Do we need this last sentence?

Mr. Boland: That is what we object to.

Mr. Gallagher: We object to the inference that is drawn from the way in which this is drawn.

Mr. Burling: I do not believe it is important.

The Court: Let us put a period there.

Mr. Gallagher: Strike out from the word "and"?

The Court: No. 8 will read:

"Fritz von Opel's naturalization in Liechtenstein was accomplished under a waiver of the usual Liechtenstein-ean naturalization laws that provided for extensive residence—"

Mr. Gallagher: Could we change that to "three years' residence"?

Mr. Boland: The statute says three years.

Mr. Burling: I think if Your Honor is going to cut it down, it might be appropriate also for Your Honor to find that in connection with the obtaining of this waiver von Opel paid approximately $10,000, two-thirds to the community and one-third to the principality.

Mr. Boland: Where are you putting this, Your Honor?

The Court: In connection with obtaining, he wants to add, at the end, "In connection with obtaining
3081 waiver."

Mr. Boland: "That in connection with obtaining his citizenship he paid."

The Court: All right.

Mr. Boland: "In accordance with the provisions of the naturalization law."

The Court: "In connection with obtaining his citizenship, Fritz von Opel paid"—how much?

Mr. Burling: Approximately $10,000 in all, two-thirds to the community and one-third to the principality.

Mr. Boland: "In accordance with the naturalization laws."

Mr. Burling: No, if Your Honor please, it was not.

The Court: Two-thirds to which?

Mr. Burling: Two-thirds to the community and one-third to the principality.

The Court: Let me hear what you want, Mr. Boland.

Mr. Boland: We would like there "in accord with" or "pursuant to the naturalization laws," or however the naturalization laws require payment for acquisition of citizenship.

Mr. Burling: The Act contemplates some payment.

Mr. Boland: Payment or purchase price.

The Court: Then, just say "the naturalization laws of Liechtenstein."

Mr. Boland: "Require payment."

Mr. Burling: Would Your Honor say, "some payment"?

The Court: "Require some payment."

3082 Mr. Boland: "for acquisition of citizenship through naturalization."

The Court: "acquisition of citizenship by naturalization."

Mr. Boland: Yes.

The Court: All right.

"* * * require some payment for acquisition of citizenship by naturalization."

Finding No. 8 would then read:

"Fritz von Opel's naturalization in Liechtenstein was accomplished under a waiver of the usual Liechtensteinean naturalization laws which provide for extensive residence. In connection with obtaining his citizenship, Fritz von Opel paid approximately $10,000, two-thirds to a community and one-third to the principality. The naturalization laws of Liechtenstein require some payment for acquisition of citizenship by naturalization."

Now, finding No. 9. I would add at the end of 9:

"The oath was not prerequisite to naturalization."

Mr. Boland: There is an additional point, Your Honor. Section 14, if you will bear with me—it is very short—reads:

"It is within the jurisdiction of the executive or an authority empowered by him to administer citizenship oath after the state citizenship has been granted. The citizenship oath has only to be taken by male citizens of
3083 full age."

I am advised that the translation of the words "within the jurisdiction" is rather difficult. I do not know anything about it except that I am advised by Dr. Kronstein and Dr. Kaufmann, and that there is no question in reading the German, that what this means is that it is within the discretion. It is a little short of the word "discretion," but there can be no other interpretation than that it is really within their jurisdiction to require the oath, and that is what we have in mind by saying that the record is barren of any request of Fritz von Opel to take an oath.

Mr. Burling: I submit, Your Honor, that we should not now, at this time, start taking any expert testimony as to what the translation is. I am advised just the opposite.

The Court: I agree with you on that.

Mr. Boland: As a matter of fact, the record itself, if you read this, may not mean anything other than discretion.

Mr. Burling: Will Your Honor also consider the sentence which reads:

"The citizenship oath has only to be taken by male persons of full age"?

Mr. Boland: That is right. Therefore, it can't be required of anyone other than male persons.

Mr. Burling: I did not know that there was any contention that Fritz von Opel was either a child or a
3084 woman.

Mr. Boland: There is not. It is in their discretion to request male persons of full age to take the oath, and they cannot require anyone else to take the oath.

Mr. Burling: I submit the contrary; that the common sense, plain, obvious meaning of the first sentence is that the person before whom the oath is to be taken is the executive or authority empowered by him.

The Court: Of course, the simplest thing to do— This is in evidence, isn't it?

Mr. Boland: Yes, Your Honor.

The Court: (Continuing) Is to copy it in, then.

"Under the laws of Liechtenstein, it is within the jurisdiction of the executive or authority empowered by him to administer the citizenship oath after the state citizenship has been granted."

Do you want this "male" business in there?

Mr. Burling: I certainly request it.

Mr. Boland: Yes, I think it would be helpful to us too, Your Honor.

The Court: All right. I will just copy that in bodily.

What about No. 10?

Mr. Gallagher: I should like, if I may, to take a few minutes' time on that one.

The Court: Let me say this one thing. I have pretty well made up my mind. I frankly believe Mr. Hough-
3085 land's testimony.

Mr. Gallagher: Mr. Calvin Houghland, do you mean?

The Court: And the boy's too, as far as that goes.

Mr. Gallagher: That is Calvin and Mason.

The Court: I believe both of them in regard to these discussions. Contrary to your view, I put a good deal of credence in what both of them said. If there wasn't any testimony with regard to that, then I might be susceptible to the argument. Frankly, gentlemen, I tried hard to keep out of these findings a lot of reasons, because they are not part of the findings, any more than a jury when it passes on facts tells why it reached its conclusions.

With regard to witnesses as they came on the stand, I wrote in my notes, as they were testifying from time to time, certain temporizings I thought some of them were guilty of and certain good points I thought had been made, and this was, frankly, the net result of my views with regard to that situation.

If there is no testimony to support it, then I will hear you on that; but if there was, on the weight of the evidence I do not think there is the remotest chance of my changing my mind.

Mr. Gallagher: Then, I submit, Your Honor, if I may be so bold as to say so, that there is nothing in the record to support your finding that "at all relevant times
3086 Fritz von Opel indicated a continuing sympathy for and allegiance to Germany, his native country."

There is no statement in the record that would in any wise bear out Your Honor's findings.

There is the statement of Mason Houghland, purportedly in August, 1939, with respect to the transchannel call—Your Honor said that this was highly improbable—that took place with his father. That is the only time he says anything.

The only time Calvin says anything is in the early summer of 1940, a year and a half before the United States goes into the war. The record reflects that he said, as I remember it:

"I said to von Opel that it might be a very long war and the United States might even get into it, and he said or replied, 'No, it will be a short war, and we will win, because we have a lot of secret weapons.'"

That is the way he quoted what he said von Opel said. Even reading just that language, you cannot in any wise conclude that von Opel's statement meant the United States was going to get into the war. Certainly in 1940 if a person was for or against Germany, as many Americans were, that certainly was not a sin; we were not at war at the time.

The Court: I do not think it is a sin for him to like Germany right down to this minute; as a matter
3087 of fact, I think it is a sin for him not to. I do not hold that against him.

Mr. Gallagher: There were too many hundreds of thousands of Germans who came to this country and declared their allegiance.

When we get down to what this record reflects—and I can't bring this out too strongly, Your Honor, because we are going to stress this on other claims—there is only one relevant period of time in this whole case. Mr. Burling has made a lot of going back to 1931. The only way we had to put our case in was, in a sense, to exhibit what their defense was, so we could make a coherent story in the light of the Supreme Court opinion. But there is no relevant time in this case—none whatsoever—until December 7, 1941—from then until the date of vesting.

On December 5 the plaintiff corporation could have been loaded with the top members of the Nazi hierarchy—Hitler, Goering, Goebbels. Those men could have been the directors instead of Frankenberg, Meier, and Henggeler.

They could have had the top members of the Nazi hierarchy. They could have come in and sold stock on the Swiss Exchange validly and the Swiss could legitimately have walked in and bought it on December 6, and we could not have touched that property.

Even though Mr. Burling has tried to say what happened in 1936, 1937, 1938, 1939, and 1940, it is meaningless. You have two statements in this record, and

3088 they are all you can look to for support in your findings. That is Mason Houghland's statement which purportedly happened on a transchannel call; and Calvin Houghland's statement as to what he says Fritz said in 1940 at the time when we were not in the war, even if it was said, which, of course, we deny. But even so, if that statement as made, it was made a year and a half before any relevant time for the purposes of this case.

What does the record reflect to the contrary? We have the record replete and uncontradicted that Fritz von Opel worked constantly with Colonel Charles Mettler of Army Intelligence. He lend great aid to our war effort during the war years. In 1942 he was assisting materially the British war effort. He designed airplane fasteners which our Air Force used. He developed a forging process which our War Production Board took over. During the time he was in internment, the man was consulting with Army Ordnance and Army Intelligence. That is completely uncontradicted. If that was not the truth, the defendant would have brought Colonel Charles Mettler here. But I will tell you why they did not bring him. Not only is it the truth—and we tried to get him up here and asked that he be heard—but in the prior deposition—although this is out of the record—it stated—

Mr. Burling: If we are going to go out of the

3089 record, I may say that I was assistant director of the Enemy Alien Control Unit during the war, and I know very well why von Opel was interned. If we are allowed to go out of the record—

The Court: Of course, I can't do that.

Mr. Gallagher: I am talking about what the record states. The record, uncontradicted, shows that Fritz von Opel rendered valuable aid during our war effort, during the war years. He was producing fasteners for the British in our war effort in 1940.

Against that there is the one, single unsupported statement of Calvin Houghland that in the early summer of 1940 Fritz said, "Germany will win the war in short order." The only thing in this record as to relevant time is from December 6 or 7, 1941, to the summer of 1942.

The Court: Let us see about this. Suppose I made this finding:

"Statements made by Fritz von Opel after 1939, when he became a naturalized citizen of Liechtenstein, indicate a continued allegiance to and sympathy for Germany."

I will stop there. That is what I said on page 10 of my opinion.

"Statements made by Fritz von Opel after 1939, when
3090 he became a naturalized citizen of Liechtenstein, indicate a continued allegiance to and sympathy for Germany."

Stop there.

Mr. Burling: If Your Honor please, there is more in the record than the statements. I believe, Your Honor, that there is a showing also that in 1939 the fourth largest fabricator of aluminum wrote to him saying, "You will do a great service for Germany and for the entire German war economy if you will tackle the problem of increasing bauxite production with all your energy."

He replied that he would do so. He replied, "I stand by my prior offer," which was to go to Budapest. Then he went to Budapest and was there in November at the time that his naturalization in Liechtenstein became complete.

and he negotiated a contract for the production of a hundred thousand tons of bauxite.

The Court: Was that before 1941?

Mr. Gallagher: Certainly.

Mr. Burling: The contract was to run. It was negotiated in 1939 and entered into in 1940.

The Court: That would come within this finding. I could say, "Statements made and acts performed."

Mr. Gallagher: First of all, there were not statements made after 1939. The only statement in the record is Houghland's statement as to what Fritz said in
3091 the early part of 1940. So "statement" would be the most you could say.

Mr. Burling: He made several statements in the course of that conversation. He made the statement that he was pleased at the great German military successes; he made the statement that it would be a short war, "which we are going to win." He said he was gratified that he had contributed to the German success by inventing rockets.

The Court: You won't have any trouble with that. If the Court of Appeals finds that there is only one statement in that one conversation, why, it can take care of that all right. I think I ought to say, however, "Statements made and acts performed after 1939, when he became a naturalized citizen of Liechtenstein, and before the outbreak of war with the United States."

Mr. Gallagher: All right; put that in.

The Court: I am trying to be fair to you, because there was no evidence that it was. I am substituting for No. 10:

"Statements made and acts performed after 1939, when Fritz von Opel became a naturalized citizen of Liechtenstein, and before the outbreak of the war with the United States, indicated a continued allegiance to and sympathy for Germany."

Mr. Gallagher: I do not see what acts Your Honor is talking about.

The Court: What he talked about on the bauxite.
3092 That was before the war with the United States.
This just deals with the Liechtenstein situation.

Mr. Gallagher: How are you going to revise it?

The Court: "Statements made and acts performed by Fritz von Opel after 1939, when he became a naturalized citizen of Liechtenstein, and before the outbreak of the war with the United States, indicated a continued allegiance to and sympathy for Germany."

Mr. Gallagher: Continued allegiance and sympathy to Germany when?

The Court: For that period.

Mr. Gallagher: Would you add that on: "existing during that period"?

The Court: I think this is plain enough. It indicates continued sympathy.

Mr. Gallagher: During that period. That is all the record does reflect, Your Honor.

The Court: It indicates continued sympathy to Germany. It just does not say how long it continued.

Mr. Gallagher: But there is nothing in the record contrary to the aid he gave our Government.

Mr. Burling: If Your Honor please, there is no testimony except Fritz von Opel's, whom you obviously did not believe.

Mr. Gallagher: Which could have been contra-
309 dicted if you had wanted to bring Mettler.

The Court: Gentlemen, I think this covers it, really. His statements indicated an allegiance to and sympathy for Germany. Anything I would say there would not be intelligent beyond that statement right there. We are talking about that time.

"Statements made and acts performed by Fritz von Opel after 1939, when he became a naturalized citizen of Germany"—

Mr. Gallagher: "of Liechtenstein."

The Court: Just say: "between the time in 1939, when he became a naturalized citizen of"—

Mr. Gallagher: "Liechtenstein."

The Court: I mean of Liechtenstein. (Continued) "and before the outbreak of war with the United States, indicated a continued allegiance to and sympathy for Germany."

Mr. Gallagher: Look at your opinion, then, again, Your Honor, on page 10, where you pointed out to me that next sentence:

"* * * in technical form Fritz von Opel is a citizen of a neutral country, but I find beyond doubt his fealty at all times has been to his native country of Germany."

The Court: I am going to consider amending this opinion in that regard. I made a note of that. I will
3094 give some thought to that.

Mr. Burling: I think that the record would justify Your Honor in making a finding in language—I do not ask for it; I am seeking to avoid having the opinion rewritten—

The Court: I was not going to rewrite it. The only thing I was thinking about doing was, in the light of these amendments and discussions, by way of a supplementary memorandum. I might say that the written opinion rendered in the case has been amended by striking out so and so. If you want me to leave it in and have some reason, I shall be glad to hear you.

Mr. Burling: Yes. I think the record does justify a finding that at all times—the record starts off with his prominence in Germany—it warrants a finding that his purpose in staying outside of Germany was definitely to hold the money outside of the Foreign Exchange Controls; his close association with his father and his father's association with the Nazi Party; his statement to Hougland—Mason Hougland—about the Polish war and what "we" are going to do; his statement as to how he had bought

a Liechtenstein passport to fool the British; his extensive statement in Nashville in the spring of 1940; his statement in 1941, when—

The Court: When was that passport incident? I remember that I had that in mind.

Mr. Burling: In the spring of 1940, in Mason
3095 Houghland's house. But Calvin Houghland testified to it.

The Court: Yes.

Mr. Burling: Then, in January, 1941, Your Honor will recall, Mason Houghland said to him, "You should not have those navigational maps. If we go to war, and you are a German, and you get caught with those in your possession, they will get you in trouble."

He did not deny in any way that he was a German.

Then, the record goes on to show that he was interned by the Attorney General as a potentially dangerous alien enemy all during the war. He was not released until after hostilities were over. The only evidence to contradict that is his own statement as to how helpful he was; and I submit that the best evidence of that is that after he purportedly and allegedly helped the services, he remained in internment right up to the end.

I submit also the inference is warranted from his deal with Colonel Mettler, in that he was to stay in Miami, Florida, under much pleasanter conditions of detention than the camp to which he was sent.

Mr. Gallagher: I might say that you have been talking about the opinion when we were talking about the finding. How is the language going to read as to finding No. 10, because I have one further remark to make, if I may?

The Court: "Statements made and acts performed
3096 by Fritz von Opel between the time in 1939, when he became a naturalized citizen of Liechtenstein, and before the outbreak of the war with the United States, indicated a continued allegiance to and sympathy for Germany."

It is limited to that period.

Mr. Gallagher: Your Honor, with respect to that, with the word "allegiance" we take considerable serious issue, if you are going to amend the finding to the effect that he still had continued allegiance to Germany, then we would have to move to re-open and take testimony in that regard. This was not in issue at any time during the course of this proceeding.

The Court: What I was talking about—"allegiance" is almost synonymous with "sympathy."

Mr. Gallagher: If you strike the work "allegiance," we have no objection.

The Court: That is all right. Is there any reason why it should not be stricken?

Mr. Burling: I think Your Honor weakens the point very greatly. I think "allegiance" is a stronger word. The man was born a German. He was a very prominent person in Germany. For personal and financial reasons he goes outside of Germany but keeps coming back. His visits totaled three a year. There is all this evidence of broad Nazi sympathy.

Mr. Gallagher: My friend must have known that that was in the case, because he kept talking about it and
3097 kept examining him on his father's Nazi activities.

One of our main contentions, if Your Honor will remember—the last line there—related to the citizenship.

The Court: Frankly, I do not know whether or not the word "allegiance" is misleading. What I really meant was that it indicated a continued interest in the welfare—

Mr. Gallagher: That is what I mean.

The Court: I do not want to force a technical term on them in that regard. I do not mean to find that failure to take an oath of allegiance was fatal to his citizenship. What I am trying to get at is his leaning that way.

Mr. Burling: May I suggest that the word "limited" be substituted?

Mr. Gallagher: No, Your Honor. Crittenden, their witness, testified on the stand that von Opel deplored what the Nazis had been doing around Berlin. That is in the record, page 1913.

Mr. Burling: The character of that deploring was that the buildings were shabby and that they had cut down trees on the Unter den Linden.

Mr. Gallagher: He is still criticizing the Nazis.

Mr. Burling: That is bitter criticism of one's government!

Mr. Gallagher: He was never in Germany—

Mr. Burling: I have heard people criticize the 3098 present Administration—

The Court: This is what I have decided to do. Findings of fact, when you deal with submitted, formal findings of fact, really are on the inclinations you have. Inferences drawn from them in the opinion do not make additional findings, as I understand it. In other words, if they are inconsistent with them, then they should be stricken; but if they are consistent with the findings, they can very readily remain. So I think I will make that change, but I believe I will let that opinion stay as it is.

In other words, I have the feeling that Fritz von Opel continued to like Germany, and I just don't know how to get away from it. If that does not follow from the testimony or from this finding I have made here, then you are entitled to argue that that is illogical and unreasonable. The only proposition is this: Mr. Burling's attempt, as I understood it throughout this trial, was to indicate that Fritz von Opel, at least to a large extent, had maintained a very great interest in the affairs of Germany. He went so far as to say that this Liechtenstein citizenship was a completely bogus affair, although he said it was accomplished, and he made a whole lot of point about the lack of allegiance. He was pointing that up. Of course, I would have taken your testimony on it if you had offered it.

Mr. Gallagher: If you are still going to use the
3099 word "allegiance"—

The Court: I have stricken that out. I have changed it this way, now:

"Statements made and acts performed by Fritz von Opel between the time in 1939 when he became a naturalized citizen of Liechtenstein and 1941, when war was declared with the United States, indicate a continued interest in the welfare of and sympathy for Germany."

The point I was talking about is that I do not see much use in amending my opinion on it.

Mr. Gallagher: The finding would govern rather than the language of the opinion, is my understanding?

The Court: Unless the language of the opinion is inconsistent with the finding. The language of the opinion will stay; but if it is inconsistent with the finding, then the Court of Appeals will just say I went too far on it. I do not want to begin amending this unless it is plainly inconsistent. That was the point that you made on page 8.

Mr. Gallagher: You said on page 10:

"* * * but I find beyond doubt his fealty at all times * * *."

Mr. Burling: So it is.

Mr. Gallagher: There is in the record to support that statement, Your Honor, I submit—

The Court: Well, I do not think background would
3100 be evidence of it. I do not think it is evidence.

Mr. Gallagher: His background certainly would not indicate his fealty for Germany.

The Court: I will give it a little more thought. I have got the point of both of you.

Mr. Gallagher: All right, Your Honor. The next one is finding No. 18.

Mr. Boland: Your Honor, the only point we have in find-

ing No. 18 is the possibility for us that perhaps this finding might exclude the fact that full title to the shares had been passed to Fritz in the case. Our amended finding is designed to take care of that one part only. You see, the words "intended to be a gift of part interest" might lead one to conclude he had not gotten full title. If there is a finding to the effect that he did get full title to the stock, that is the only change we have.

Mr. Burling: I have no objection to that part of the amendment which works that change—the second sentence of the proposed finding. But I believe the remainder of that proposed finding anticipates finding No. 32 and merely confuses that point.

Mr. Boland: I have no objection to the addition:

"Legal title passed to Fritz von Opel."

The Court: "Legal title to the von Opel shares passed to Fritz von Opel by the agreement."

3101 Mr. Boland: "Legal title to the 600 Opel shares passed to Fritz von Opel."

The Court: What is the date of the agreement?

Mr. Boland: October 5, 1931, Your Honor.

We thought it well to add as a finding that which you stated in your opinion at page 6 and have added an additional sentence:

"The purpose of the gift was to provide for payment in the form of gold or American currency on the sale of the Opel stock and to make financial provision for Fritz von Opel."

The Court: You have no objection to that, have you?

Mr. Burling: No, if I understand it correctly.

The Court: All right.

Mr. Gallagher: The next suggested change, Your Honor, is finding 29. Your finding as it now reads is:

"The record is bare of any evidence of who voted the shares of Transdanubia Bauxit, A. G. from 1940 through 1945, inclusive."

Our suggested finding is:

"After December 6, 1941, the shares of Transdanubia Bauxit, A. G. were retained by the plaintiff corporation in its safe and were not voted from that time on."

In support of that suggested change, we refer to the record, pages 2269, 2271, and 2320, the testimony
3102 of Eugen Meier, President of the Korporation.

The Court: Is there any objection?

Mr. Burling: Oh, yes, there certainly is, Your Honor. The record is bare; Your Honor's finding is correct.

Mr. Gallagher: The record references are at page 2269. Mr. Burling is questioning. He says:

"At any rate, you do not deny that Transdanubia Bauxit was wholly owned by Uebersee at all times after December 6, 1941?"

"Answer: I believe yes, but there was nothing we could do about it, because nobody would have bought these shares from us. If we would have sold the shares, we would have to sell them to persons within the German territory—that is, enemy territory. Thus we kept the shares in the safe and we did not do anything about them."

That is one statement of his.

The Court: That has to do with disposing of them. He is talking about voting.

Mr. Gallagher: He said they did nothing about them.

The next reference is at page 2271:

"Question: You not only did not sell it; you watched over and supervised the investment; isn't that true?"

"The Witness: It was there and we did not sell. It was there and it stayed there, and we kept it there
3103 until the postwar period, and there it is now.

"May I ask a question: What should I have done?"

The next reference is at page 2320:

"Question: Well, didn't you take any action with respect to voting that stock for all those years?"

"Mr. Gallagher: State the years. Will you give them again?"

"Mr. Burling: 1941 through 1945, inclusive."

"The Witness: I stated the matter this morning. I did not do anything."

Mr. Burling: "I did not."

Mr. Gallagher: That is right. You yourself in questioning Mr. Meier referred to him as being chief officer and the man who took over all duties of the corporation after Frankenberg had departed.

The Court: The record is bare of any evidence whether the shares, and so forth, were voted; and if so, who voted them. That will do it.

Mr. Gallagher: We suggest, Your Honor, that the record would not support that finding.

Mr. Burling: The record is absolutely bare as to whether Henggeler did or did not vote the shares.

Mr. Gallagher: You mean Meier?

Mr. Burling: Henggeler. I agree with you that Meier said no, but Meier did not vote the shares. But
3104 one of the three may have.

The Court: What is the matter with this:

"The record is bare of any evidence as to whether the shares of Transdanubia from 1945, inclusive, were voted; or if so, who voted them"?

What is wrong with that? We just do not know whether they were voted; or if they were, who did it. I think that is all right. I will run along with that, unless you find some very strong objection to it, because that is what the record is, I am sure.

Now, I think finding No. 30 is next.

Mr. Gallagher: Our suggested finding there is:

"While attempts were made prior to December 7, 1941, to sell or lease the Transdanubia Bauxit properties, no attempt was made after December, 1941. However, no control was exercised by the plaintiff corporation over its subsidiary corporation after December, 1941. Nor, at any time, did plaintiff corporation ever receive any income from Transdanubia Bauxit, A. G."

I think the record is quite clear on that. We have in the record, at pages 1496 and 1502, Plaintiff's Exhibits 70, 71, 72, and 73, which were cables back and forth, as you will recollect, and the letter, Plaintiff's Exhibit 70, from von Opel, instructing them to sell it or lease it.

The Court: Let me suggest that we change find-
3105 ing No. 30 to read:

"After December 7, 1941, plaintiff corporation never took any affirmative steps to sever its relations."

Now, Mr. Burling, what about this "no control"?

Mr. Burling: That is the point I argued at such great length.

The Court: You mean there is no evidence?

Mr. Burling: I submit it is proper for Your Honor to make a finding that there is no evidence, because the burden of proof is to show non-control.

The Court: That is what I was going to say. Is there no evidence one way or the other on it?

Mr. Burling: Meier testified that he personally did not do anything about it. The books were first in Henggeler's and then in Gaeng's custody; and the record is bare as to what they did about it.

Mr. Gallagher: Meier was the president of the corporation, as you recollect, Your Honor. He was the one, sole member of the board of administrators who at all times was a member, Henggeler having resigned in 1942, and Gaend having taken his place. He is the man whom Mr. Burling repeatedly in the record calls the chief officer for

the corporation after Frankenberg's departure for the United States in 1940.

The Court: How can I say there is no control?

Mr. Gallagher: His statement is that "we did ab-
3106 solutely nothing"—never contacted them, never got in touch with them, never did anything about it. The record is replete with statements in that respect.

Mr. Burling: The record shows that whatever was done, the handling of the guarantee was handled by Henggeler. Meier was off somewhere else and did not have the books. I could not find out when he had last even seen the books.

Our position is—and I am sure Your Honor recalls—that there is absolute failure of proof to show what happened to Transdanubia after December 7, 1941, except for Henggeler's activities in connection with the guarantee. There is no evidence except that Meier did not do it and Frankenberg did not do it, but the remaining director knew who had the books and may or may not have voted the stock and communicated with the directors, and so on.

Mr. Gallagher: The books of the corporation reflect that the investment was written off.

The Court: Frankly, a study of the testimony in that regard left me very much undecided about this proposition. My recollection of it was very general on it. I do not think that that would justify, in the absence of more authoritative evidence, my making a finding one way or the other about the control. I think I will let finding No. 30 stand with that amendment:

"After December 7, 1941, the plaintiff corporation
3107 never took any affirmative steps."

Isn't that finding of the evidence in No. 31 right?

Mr. Gallagher: No.

The Court: I know you objected to some testimony there.

Mr. Gallagher: You have the finding there:

"and during this period Transdanubia Bauxit, A. G. shipped bauxite to Germany."

There is only one exhibit, which you will recollect we objected to, in this record, Defendant's Exhibit 90, a letter dated February, 1942. That letter reflects bauxite shipments in October, November, and December, 1941. It reflects approximately 1,600 tons of bauxite in October, approximately 1,100 tons of bauxite in November, and approximately 600 tons of bauxite in December.

Hungary and the United States were not in a state of war until December 13.

That is the only thing in the entire record which in any wise would indicate any shipments of bauxite to Germany or elsewhere. We submit that with that showing of a falling off of from 16 to 11 to 6, with a declaration of war taking place on December 13, it would be just as reasonable to conclude, if not more so, that no further shipments were made or that they ceased with the declaration of war. There is not one other line of evidence in this record about shipments during the war

3108 period.

The Court: Why don't we say, "During the months of—"

Mr. Burling: May I object? I do not agree at all with the statement of the evidence.

Mr. Gallagher: All right; take it and look at it.

Mr. Burling: In the first place, there is additional evidence besides this letter that showed a shipment and gave the total quantity shipped.

Mr. Gallagher: What is the exhibit number?

Mr. Burling: Defendant's Exhibit 90.

Mr. Gallagher: That is what I am speaking of, the letter of February, 1942. That is the only one in the record. All the others were withdrawn by Mr. Burling himself.

Mr. Burling: I find I am wrong on the subject of this

particular letter, However, I will address myself to the contract. Your Honor will recall that Fritz von Opel negotiated a contract to ship bauxite to Giulini Brothers in Germany, and the contract called for shipments in 1940 and 1941 and a shipment of 40,000 tons in 1942. There was a showing that there were shipments made in October, November, and December under that contract of 1941, the contract to run all through 1942, and no showing whatever of cessation. I believe the record does support the finding that there was shipment of bauxite during the war.

Mr. Gallagher: But no showing that this contract was in any way complied with.

3109 The Court: You had Fritz von Opel's efforts to speed it up, and then you had this letter of February 4, 1942, which evidently dealt with shipments in October, November, and December in 1941. Did you have any after that?

Mr. Gallagher: Nothing.

Mr. Burling: Nothing except the fact that the contract which von Opel negotiated called for shipments in 1942.

The Court: Yes, but that would not indicate shipments in there. You have already said there was nothing done to stop it. He is just saying here that during October, November, and December, 1941, they shipped bauxite.

Mr. Burling: Would Your Honor also find that there was a contract to ship bauxite during 1942 and that the record is bare of any evidence that that contract was terminated?

Mr. Gallagher: Then, I would have to request also the making of a finding so that the findings themselves reflect what our exhibits 70 through 73 indicate: that Fritz von Opel gave instructions to sell or lease the mines in the spring of 1941 and refused to advance any further payments to the corporation, although requested on many occasions by them to advance for mining operations. That is right in the testimony here. Those exhibits are in without objection.

Mr. Burling: I agree that there are exhibits in. They state that Fritz von Opel suggested leasing.

The Court: What do you say about the contract?

3110 Mr. Burling: I say the contract called for shipment of 40,000 tons of bauxite to Germany in 1942.

The Court: By contract executed when?

Mr. Burling: March, 1940.

The Court: By Transdanubia?

Mr. Burling: And Giulini Brothers.

The Court: Transdanubia agreed?

Mr. Burling: Transdanubia agreed by contract.

The Court: Transdanubia agreed to ship bauxite to Germany until when?

Mr. Burling: Until the end of 1942.

Mr. Gallagher: With respect to the exhibits—I will show them to you so that you can refresh your recollection—they were the letters where they are asking for further money, and von Opel cables thereafter refusing to give it to them and telling them to try to lease or sell the mines.

I should like a finding to the effect that Fritz von Opel refused to advance any funds to Transdanubia after March, 1941, for furthering the operations of the mine and gave instructions to the corporation to endeavor to sell or lease the mine.

Mr. Burling: He did not give instructions, if Your Honor please; he suggested in the alternative.

Mr. Gallagher: All right; change it to that—"suggested."

3111 The Court: Bring that in at 2 o'clock.

Mr. Gallagher: All right; I will write it up. That is finding No. 31, Your Honor. We will rewrite it during the recess.

The Court: Now, finding No. 32.

Mr. Boland: Finding No. 32 is very simple.

The Court: The only thing you want is "dividends" substituted for the word "interest"?

Mr. Boland: Yes, Your Honor.

The Court: Is there any objection to that?

Mr. Boland: Actually, to quote the gift agreement verbally, it is "dividends and interest of the gift."

The Court: "80 percent of the dividends and interest." Is there any objection to that?

Mr. Burling: We have no objection to that change. I should like to point out in general that the usufructuary interest was reserved—that is, the in rem interest was reserved—in all, not 80 percent. The testimony is that there was an in personam right—

The Court: That is covered somewhere else.

Mr. Burling: I do not think it is material.

The Court: You can leave out "intended" and say "agreed to have."

"It was agreed that Wilhelm and Marta should have."

Mr. Boland: All right.

3112 Mr. Burling: I do not think it was, if Your Honor please. My own position is, if you will recall, that Miss Schoch testified that the legal situation would be that the usufruct to the income was 100 percent to the parents, except to an in personam right which Fritz had to 20 percent.

The Court: The only thing I am trying to get at is this: I can say:

"A usufruct interest was established in their favor"—period. I would stop right there. That is all I was trying to get at in that point. Then I could define it later.

Mr. Boland: That is all right.

The Court: Since we cover that later, why don't we stop right there?

Mr. Burling: Yes, Your Honor.

The Court: Now, finding No. 36.

Mr. Boland: I would say the finding of the Court may be subject to an ambiguous interpretation. What we are doing is to limit what we think the Court had in mind.

"A person having a claim for the creation of a usufruct."

Mr. Burling: I object to it if it also means striking out what Your Honor has written. Actually, if the other propositions of law are correct—

Mr. Boland: The only thought we had in mind, if Mr. Burling would bear with me, is that the finding is so
3113 broad it may also include the fact that after the usufruct was established and sale had been made to bona fide purchasers—whether or not it could still follow the proceeds. As I understand the law, the right of a person having a usufruct is to trace the assets from the gift in order to establish a usufruct and its results—in other words, the corpus of the res.

Mr. Burling: I don't understand the elements of what my friend is saying. I have no objection to his proposed language if Your Honor will add it rather than substitute it.

Mr. Boland: As long as you put "i.e."

The Court: That it is limited to the original?

Mr. Burling: I think my friend is confused as to the law. The record does not tell us when Fritz gave the key to Frankenberg which created or brought into being an in rem right. I do not know whether, in other words, Wilhelm and Marta von Opel were usufructuaries following the proceeds of the gift into Uebersee or whether they were persons having an in personam right of usufruct at the time that the agency was created, in which case they follow through a different path.

I submit that both propositions of law are correct and that one or the other is applicable, depending upon when the key was handed to Frankenberg. Therefore, the sim-

plest thing is to find both, since there is no dispute as
3114 to the correctness of both.

The Court: Is there any question about whether it applies to a double transfer? Could you say "from any proceeds from the sale"?

Mr. Burling: He did sell it to one person, and then they sold those securities and obtained still others.

Mr. Boland: No question of transfer; you could trace right through.

The Court: Then, your word "originally" might mislead there.

Mr. Boland: We used that word "originally" merely to connote the idea of transfer from one end to another, right through, so that you could establish usufruct at the time.

The Court: Cut out "originally" and then you are all right. "property covered by the claim." What is the difficulty about both going in? I don't know what we are trying to get.

Mr. Boland: The only thought I have in mind is the right of the person who claims establishment of usufruct to trace the proceeds before he establishes; but after it has been established, and particularly here, where you are dealing with bearer shares, the law is not such that it may be traced after it has been established. He has a personal claim against the individual; but query: as to whether the law is so clear as to how he may trace assets afterward.

3115 The Court: I don't remember any testimony on that.

Mr. Boland: I suppose probably it is academic.

Mr. Burling: I think it is.

Mr. Boland: Dr. Kronstein seemed to think it was very important.

Mr. Burling: I am perfectly willing that my friend's language be added.

The Court: Let us add that, then, and make both sides happy.

Mr. Boland: If you are going to add that, I would prefer to withdraw ours and leave yours unchanged.

Mr. Burling: I haven't any objection to that either, if Your Honor please.

The Court: All right.

Mr. Gallagher: Your Honor, I would like to take up at this point, rather than discuss findings 39 through 45, even though we do make some suggested changes in the tentative findings in accordance with your view on it—I would like at this time to bring to Your Honor's attention what to us is a very important point, and one in which we feel that the Court has inadvertently run into serious error. I mention that and would like to raise it with you at this time so that the question is not raised for the first time in the Court of Appeals.

You will recollect that the testimony of the ex-
3116 perts, both for the Government and for the plaintiff, with respect to the establishment of usufruct was that copossession is a sine qua non. Until you have copossession, you don't have usufruct established as a right in rem. Your Honor is quite cognizant of that fact, as evidenced by your opinion and your findings, and in finding that the delivery of the key to Frankenberg constituted valid delivery and established a usufruct in rem. You state under one theory of German law voting rights go with the usufruct, but the res had taint, and hence the corporation is tainted.

Following out this understanding of the German law and the testimony of the experts both for the Government and the plaintiff, unless you have copossession or possession in your own hands or in the hards of your agent, you do not have a usufruct in rem. If you do not have a usufruct in rem, you are back to a usufruct in personam. You are where you have to again demand estab-

lishment of usufruct before even under that one theory of German law there would be any voting rights, hence control, hence taint. The record is quite clear. Mr. Burling throughout the record and in his cross examination evidenced no question about it. I am not discussing the sale of the shares in 1936. I am not taking issue with Mr. Burling whether it was, as we contend, a valid sale or tax evasion or sham sale. Let us say for the sake of this argument that I make no objection to what it would be
3117 called. But the simple fact is, as you have found the record in your findings up to this point. You found that sometime between 1932 and 1934 the key was given to Frankenberg, and that gave possession to the usufructuary's agent. An in rem right was established, and under at least one theory of German law you had voting rights.

Frankenberg has the key to that safe. The record clearly reflects that in 1936 those shares came out of that safe. They could come out only with the consent of the usufructuary's agent, Frankenberg, following your theory. They in turn were delivered to the Schweizerische Bankgesellschaft, as reflected by Plaintiff's Exhibit 78, for the account of Frima, which is Fritz—and there is no question raised in this case that Frima and Fritz are synonymous. Regardless of what kind of sale you call it, Frankenberg does not have his hands on those shares any longer, and they are bearer shares.

Mr. Burling in his summation went on to describe the fact that this was a bogus sale; that while those people were getting something von Opel retained the voting rights to those shares in the Schweizerische Bankgesellschaft physically.

Mr. Burling: The Bank in Baden.

Mr. Gallagher: I stand corrected on the bank. They are in the hands of another bank which is holding them on

behalf of 16 Swiss purchasers. And does the record
3118 reflect that? They stayed over there all during the remaining '30s. Frankenberg comes to the United States in 1940. He is over here all during the so-called relevant times. "Relevant times," as I again want to stress to Your Honor, is simply from December 7, 1941, to the date of vesting. That is our relevant time. No other time is relevant; just those six or seven months. During those six or seven months Frankenberg is in the United States.

Frankenberg is in the United States all during 1941. But the record also stands uncontradicted that in November, 1941, the shares are repurchased. By whom? By Frima, which is Fritz von Opel.

From November, 1941, to adopt Mr. Burling's argument of continuendo—we now use continuendo ourselves—from November, 1941, they are on deposit in the bank in Switzerland in the account of Frima, but not in Frankenberg's possession.

The record is not too clear on the German or Swiss law with respect to how important that copossession is, other than the statement that copossession is a sine qua non.

We have discussed this at great length with Dr. Kaufmann and Dr. Kronstein, and we will ask Your Honor to permit us, in the light of that record on bearer shares, and who votes those shares—only the person that has got possession—and without voting power—even fol-
3119 lowing out your opinion, from November, 1941, without having voting power in anybody other than Fritz—we say it is in Fritz; it is in nobody else. We have no control, even following your discussion of taint. So for that reason we would request the Court to permit us to re-open just for a sufficient length of time to take additional testimony from both Dr. Kronstein and Dr. Kaufmann as to the laws of both Germany and Switzerland as to who votes bearer shares and as to what, secondly, because it is the most important question in the control

feature, following your opinion, what happens to a usufruct in rem when possession is given up by the usufructuary or his agent. That is a secondary consideration. The other is the important part for purposes of this case or for the purpose of appeal or for Your Honor's decision in this case. But Plaintiff's Exhibits 78, 79, and 80 show the record to be completely uncontradicted that from November, 1941, onward, and particularly during our relevant time, from the outbreak of war until the date of vesting, these shares were held in the bank in Switzerland for the account of Frima, and Frankenberg has no possession. Therefore, any control features rest with Fritz von Opel.

For that reason I would like to re-open and take additional testimony from Dr. Kronstein and Dr. Kaufmann in corroboration of the statement I have just made to you with respect to Swiss and German law, that
3120 the holder who physically has the possession, or the one for whose account are being held the bearer shares in Switzerland is the one who has the right to vote them.

The Court: Gentlemen, I think it would be a very serious mistake at this time to take additional testimony. It would start here a precedent that would be very, very serious. If I took your witnesses, I would have to take Mr. Burling's; and after having written an opinion and made findings of fact, if I let you come in on some other phase of it at this late hour, I am sure I would commit reversable error beyond any question. It would not be in the exercise of sound discretion. I think it would set a terrible precedent.

I frankly think, in my own judgment with regard to that whole matter, that that type of possession you are talking about is not what I would call possession. It is a power or custody proposition, unless there is something in this record that shows a passing out of the shares without any intent on the part of the beneficiary of the usu-

frust to give up his interest in it would constitute a divest of his interest. Unless you could establish that—

Mr. Gallagher: The experts would testify, Your Honor, and we would not contend that the usufructuary has given up his interest. We merely submit he would be in possession in personam, which was before it became in rem.

3121 The Court: Suppose I own a watch or I own an interest in some shares of stock. I say to you, "Here are bearer shares. You go out and get out of some taxes if you can, because I am going to keep my interest in this thing. I am going to control it ten years from now."

You say, "That is all right. I just want to go up there to have a transaction and get out of some taxes."

If I do that, I don't believe there could be any law to divest that interest.

Mr. Gallagher: I think Mr. Boland can clarify you on this phase.

Mr. Burling: May I speak for a moment?

The Court: Yes.

Mr. Burling: The matter can be solved very simply without any reference to German law. Plaintiff's Exhibit 80 shows that the shares on November 4, 1941, were delivered to Adler and Company. Adler and Company is the bank of Frankenberg. He has also been a director of the bank from 1931 to date and at various times has been managing director.

The record is bare of any evidence that the shares were ever taken out of Adler and Company from 1941 to this minute. So Frankenberg did have possession during what Mr. Clark says is relevant time.

The Court: I have to find the facts that are here. Of course I will do that. If there is any correction of

3122 findings of fact, that is all right. But I think reopening of the testimony would establish a very bad precedent. I shall be glad to straighten out any mistake I have made in the proposed findings, but I could not, if there

is any opposition to it, receive any testimony that the mere handing over of custody to shares of stock with intention to keep interest in it would take away interest in the rem. I just can't understand it.

Mr. Gallagher: It would put you in a position where you could demand reconveyance.

Mr. Burling: I am compelled to object to it. I should like to state my formal grounds.

The first ground is that it is not the law, that an expert would testify to, that once the in rem right is created, a usufruct is created. That is all the possession you have to have.

The Court: Until there comes a time that with your consent your interest is divested.

Mr. Burling: That is right. With physical possession of the bearer shares, it is not necessary to maintain an in rem usufruct.

The Court: If he used it without giving up his interest. That is the point. You have to give up your interest in the rem.

Mr. Burling: Second, the evidence is that the shares
3123 remained at all times subject to the control of Frankenberg. Frankenberg arranged this scheme—this tax-evasion scheme—and it ran through Adler and Company. The shares, I agree, were physically the custodial account of a bank; but before Frima could get them back they had to pass through Adler and Company. When the transaction was reversed in 1941, the shares physically went back to Adler and Company.

Mr. Boland: Mr. Burling has mentioned what he thinks the law is; I think I ought to be permitted to mention what we think the law is.

The Court: State what you expect to prove.

Mr. Boland: I think all the experts are in agreement, including Dr. Holstein, from the University of Frankfort. They all state, with respect to bearer shares, that the voting right, which is the main element of control, is lost when

possession is gone, even though usufruct has been established.

Under the terms of this agreement with the 16 Swiss bankers, as I understand it, Fritz had the right to buy the shares back at the purchase price paid to him. However, Fritz also had the opportunity, if he did not buy them back —and if he did not buy them back, the shares became the property of Fritz' bankers—but notwithstanding the fact they were bearer shares, the only way you can establish a right in rem is through possession. Once bearer shares are gone, the voting rights go with the bearer shares.

3124 Under the agreement, it is true that Fritz von Opel retained the right to vote them himself. So we have a factual situation of Fritz having taken these shares out of the deposit box, which created usufruct under your theory—taking them out necessarily with the consent of his father's agent—let us assume that—and putting them into the account for the 16 Swiss bankers under an agreement by which he—not Frankenberg—voted and retained voting rights. When these shares came back, they came back to Adler and Company through another bank, but they came back, as Defendant's Exhibit 80, to Frima Trust Establishment. They did not come back to the account of Frima or Fritz or Dr. Frankenberg. Dr. Frankenberg was over here, and there was no way under Swiss law or under German law that Frankenberg here in the United States, after the reconveyance of those shares back to the account of Frima, could have exercised voting control.

The Court: Suppose the owner of a usufruct interest in shares of stock told a co-owner he might take these shares out to operate "for your tax benefit, with the understanding, however, that I maintain my interest in them, and that my agent, Mr. Frankenberg, is going to control those stocks and control this corporation and its operations for years to come. No matter what the form of your transaction is, your custody, or what you do with it, I am going to

3125 keep that interest."

I would not believe under the law that he would

lose it any more than I would lose it if I told you you could use my watch for two or three days and then give it back to me.

Mr. Boland: Our experts state that the father would retain the right to re-establish usufruct. There is no question about that. He still has an in personam right. If there were such an agreement between the parties, perhaps the father would count upon the son or count upon the agent to make sure it would be re-established. But the record is absolutely devoid after these stocks came back on November 4, 1941—not only devoid of any showing of re-establishment, but, as a matter of fact, it seems to me—

The Court: You have shares of stock that simply evidence a right.

Mr. Boland: Bearer shares are a right in themselves.

The Court: No, they are evidences of a right. Your right is a right to part of your corporation's proceeds. It is not a tangible proposition like that. You can assign that by a separate instrument. He could have taken those shares of stock and written back at that time:

"Whereas I take the evidence of the right to the interest in there, I vouchsafe to you retention of your right, title, and interest in that corporation."

This is just a piece of paper; it is not like a watch.

3126 Mr. Boland: You have a gift under the usufructuary. Legal title is clearly in Fritz. Everybody admits that.

The Court: You make your offer of proof; I shall have to deny it. I just do not think I can reopen this case at this time. It would be a very serious thing. If I did that, lawyers would be after me to do it in every equity case I decided. I will have to exercise my discretion not to do that now on these findings of fact.

If there is anything in here that I have done wrong, or if I have gone beyond the record, I shall be glad to correct it. But I do not believe I can reopen the testimony.

Now, I shall have to go across the street. We have two

visiting judges here today, and I have to take them to our meeting. I think I can be back here by 2 o'clock. You be here promptly at 2. I think I will be on time. You be on time.

In the light of this, we will see if we can go through the rest of these quickly. Don't forget to have No. 31 written up, if you can, because I want to get rid of this today if I possibly can.

(At 12:25 p.m. a recess was taken until 2 p.m. of the same day.)

3127 AFTERNOON SESSION

(The hearing was resumed at 2 p.m., upon the expiration of the recess.)

Mr. Gallagher: Your Honor, with respect to finding No. 31, I believe you have the preliminary part, but if I may, I should like to state it again for the record. It reads, in effect:

"In October, November, and December, 1941, Transdanubia Bauxit, A. G. shipped bauxite to Germany. Transdanubia Bauxit, A. G. had entered into a contract with Giulini Brothers in Germany in 1940, providing for shipments up to and through the year 1942. However, in the spring of 1941"—

Do you want me just to dictate this to the reporter?

The Court: Have you agreed on it?

Mr. Burling: We have agreed on that, but it is not written down.

The Court: Why don't you just send it in to my secretary and let her type it and then bring it in in that form. Have her make a couple of copies.

Mr. Gallagher: It is pretty rough. I don't know whether she will be able to read it. I showed it to Mr. Burling. May I dictate it?

The Court: I want to turn over what I have to Mr. Burling to have it typed.

3128 Mr. Gallagher: May I be excused for 30 seconds?

The Court: Surely. Can the others carry on?

Mr. Gallagher: No, I don't believe so.

Mr. Burling: I have a statement to make which will take perhaps 15 seconds.

In relation to the motion to reopen, I might further protect the record by stating an additional ground. I further object to the reopening on the ground that the matter which is proposed to be inquired into is not newly discovered in any sense; it is additional testimony concerning the law of usufruct, which was fully explored during the trial.

The Court: All right. Can you read Mr. Gallagher's handwriting, Mr. Ingoldsby?

Mr. Ingoldsby: I can come pretty close to it.

The Court: Well, tell my secretary to make a rough copy of it; we can correct it if it is not correct.

Mr. Gallagher: That brings us to finding No. 39, I think, Your Honor. No. 39 as it now stands is to the effect that

"Hans Frankenberg was made managing director of Uebersee Finanz-Korporation in the spring of 1932 at the request of Wilhelm von Opel."

We have changed that in our proposed finding to the effect that it was at the father's suggestion.

You may recollect that early in the argument I
3129 raised the point that Defendant's Exhibit 8, which was the Gold affidavit, used the word "suggested." I pointed out to Your Honor at that time that the New York attorneys in their memorandum of law used the word "requested." The affidavit itself uses the word "suggested." We submit there is nothing else in the record to reflect that the father requested that Frankenberg be appointed managing director.

Mr. Burling: I freely concede that the word "suggest"

was used by Fritz in his affidavit and in the memorandum of law. I think the record, however,—the entire record—and Your Honor's findings support the notion of request. Your Honor has found that Wilhelm von Opel had the usufruct to the property and that he wanted Frankenberg as his agent to safeguard his usufructuary interest. When he said, "I suggest"—assuming he used the words, "I suggest," to Fritz—even that would be a request. For example, if Your Honor were to say to me, "I suggest you sit down," that would be more than a request.

The Court: I do not think it makes very much difference. I will leave it as it is.

Mr. Gallagher: I might point out that the only record reference Mr. Burling set forth in his proposed findings of fact—if we are wrong, you can check us, Mr. Burling—was Defendant's Exhibit 8, the Gold affidavit. In their record reference in support of the word "request," we feel
3130 it should conform to their own citation.

The Court: "Request of Wilhelm von Opel in the form of a suggestion."

I will change it that way.

Mr. Gallagher: No, No. 40, as your tentative finding now is, reads that—

"Thereafter, Hans Frankenberg continued to be at all times and still is managing director of Uebersee Finanz-Korporation."

Our suggested change is:

"Thereafter, Hans Frankenberg continued to be managing director of Uebersee Finanz-Korporation, but between 1940 and 1945 Dr. Eugen Meier, president of the Korporation and a member of the Board of Administrators, acted as chief officer of the Korporation."

The Court: Why not just say that:

"Thereafter, Hans Frankenberg continued to be at all times and still is managing director of Uebersee. Between

1940 and 1945 Dr. Eugen Meier, president of the Korporation, acted as chief officer of the Korporation."

Mr. Gallagher: Exactly.

Mr. Burling: Meier started to be chief officer long before that in the technical sense that he was president of the board. There is no evidence that he ever acted or did anything. I think to make the finding "thereafter" would
3131 suggest there was some change in who was really director.

The Court: Yes, it would.

Mr. Gallagher: Mr. Burling himself, at page 2299 of the record, in questioning Mr. Meier, referring to the fact that Frankenberg had left, said:

"Did there ever come a time when you did have a direct hand in the management of the affairs of the Korporation?"

Meier answered:

"That became necessary when Mr. Frankenberg left in the year 1940, and we were left alone without connection with Fritz von Opel."

"Question. In other words, up until 1940, Frankenberg ran the company; isn't that true?"

"Up until 1940." This is Mr. Burling himself.

"Frankenberg ran the company; isn't that true?"

Meier: "Administratively speaking, yes. The technical and financial management was in the hands of Fritz von Opel."

At page 2266 of the record, Mr. Burling asked:

"Question. What action did you take as chief officer of Uebersee after that date with respect to this investment?"

Mr. Meier answered: "I have not taken any action. We had no means for engaging in transactions. I have
3132 not taken any action whatever."

There is not one line in this record, and there is not one exhibit in this record, which reflects that at any

time after 1940 Hans Frankenberg occupied any position with respect to the plaintiff corporation other than the fact that he was and remained a director of it.

The record is completely devoid of any testimony or exhibits that he in any wise engaged in the operations of American subsidiaries or that he in any wise engaged in the operations of the plaintiff company. The record does reflect conclusively that Meier was the man who from 1940 to 1945 did run the plaintiff corporation.

Mr. Burling: The record reflects no such thing. The record reflects that the last time anybody did anything with respect to assets—that is, securities—which are deposited, and which this suit is about—the last action anybody took that was testified to was when Frankenberg arrived in the United States from Europe and took Fritz down and "kicked the little master around until he straightened up the mess in Shreveport"; that is to say, the oil-producing companies which had their headquarters in Shreveport.

Mr. Gallagher: With respect to that, their own witness gave a different definition of the German word "vertrotten."

Mr. Burling: I believe there is some controversy as to whether the translation of the German is "worked
3133 on" or "kicked." At any rate, Frankenberg forced Fritz to do something in 1940. After that Meier's own testimony is he did not do anything. I do not understand how my friend can argue that Your Honor can find that Meier acted as chief officer when Meier testified he did not act at all.

I will concede that Meier was at all times from 1932 to date chief director, but I object to a finding that he acted after that date, because as long as anybody continued to act, Frankenberg was doing it.

There is a hiatus from the spring of 1940 to the spring of 1942; and after that we—the Custodian—had the property, and, of course, Frankenberg could not do anything.

Mr. Gallagher: But Meier could have acted with respect to it from 1940 to 1942.

With respect to the record, referring to page 2239, Mr. Burling asked Mr. Meier:

"Did there ever come a time when you did have a direct hand in the management of the affairs of the corporation?"

"Answer. That became necessary when Mr. Frankenberg left in the year 1940, and we were left alone without connection with Mr. Fritz von Opel."

With respect to the word "trotten," as to which Mr. Burling says there is some question whether it means "kicked," "worked on," or "persuaded," we submit
3134 that the definition that Mrs. von Opel gave—and she was their witness—is the definition that applies in this case.

I should like to remind Your Honor of the fact that in her testimony she stated quite arbitrarily that it was at her request that Frankenberg talked to Fritz about bailing himself out of the Shreveport set-up, where he had dropped over half a million dollars.

I am not standing too much on the technical ground that she is the Government's witness or the fact that she is Mr. von Opel's wife. Nevertheless, it is her testimony as to how it happened that Frankenberg had anything to say to von Opel and why she wrote what she did in that letter which came into evidence here.

Under those circumstances, and with the Meier testimony in here that from 1940 on, after Frankenberg left, we feel that the record warrants amplification of this finding to say that during the years 1940 to 1945 Meier acted as chief officer of the corporation.

Mr. Burling: That argument in no wise attacks the fact that Meier testified he did not act at all. If he did act at all, he did not act as chief officer of the corporation.

Mr. Gallagher: He was talking about Transdanubia at the time he said, "We took no action." But when Mr. Burling said:

"Did there ever come a time when you did have a
3135 direct hand in the management of the affairs of the corporation?"

Meier said:

"That became necessary"—

that he have a direct hand—"when Mr. Frankenberg left in the year 1940 * * *."

Those record references refer to the fact that he had said, "We did nothing about Transdanubia; merely left the shares in the safe; didn't do a thing about them; what could we do? What would you suggest, Mr. Burling?"

That is the same question we posed in closing arguments. Mr. Burling says just don't do business.

Mr. Burling: May I ask my friend to tell me the record reference where he says that the answer, "I didn't take any action," was limited to Transdanubia?

Mr. Gallagher: I might turn the question about, if I may. You give me the record reference where it says he took no action and I will point out the reference to Transdanubia.

Mr. Burling: I heard Mr. Gallagher read that just now. I can't find it.

Mr. Gallagher: That page is 2266. I am sorry.

"Question. What action did you take as the chief officer of Uebersee after that date with respect to this investment?"

"The Witness. I have not taken any action. We had
3136 no means for engaging in transactions. I have not taken any action whatever."

Mr. Burling: I again say that is ambiguous. There was no evidence that anything had been done in Switzerland after 1940, with the possible exception of the Transdanubia matter which we discussed. The remaining assets of the plaintiff corporation were a plantation in South Africa or in Tanganyika, and it was not Meier who misrepresented the status of the plaintiff or caused the status of the plaintiff to be misrepresented to the British authorities. Aside from that the remaining assets are all in this country, and Meier never acted with respect to them.

But if the question is whether Meier was titular chief officer of the corporation from 1932, I would have no objection. But this change in 1940, I think, is not in the record.

Mr. Gallagher: At page 2266 the Court said, when Mr. Burling was inquiring of Meier—the Court said to Mr. Burling:

"He has been asked by you about activities with Hungary since then."

"Mr. Burling. Would you read the question, Mr. Reporter, please?"

Then the question came:

"What action did you take as the chief officer of Uebersee after that date with respect to this investment?"

3137 "The Witness. I have not taken any action."

That was with respect to Transdanubia. But on the more general question of running Transdanubia, at page 2299, to again repeat:

"Question. Did there ever come a time when you did have a direct hand in the management of the affairs of the corporation?"

"Answer. That became necessary when Mr. Frankenberg left in the year 1940, and we were left alone without connection with Mr. Fritz von Opel."

The Court: "That became necessary" is a very vague term. I will just put in here:

"At all times from 1932 Dr. Meier, President of the corporation, was chief officer of the corporation."

Then, if your records show without any contradiction that he managed it, you can still have that in the case whether I find it or not.

When he says, "That became necessary," that is very vague. I do not know whether he was active or not. There

were a great many vague statements by some of these witnesses. I do not know the significance of that. If you want a formal finding that he actively governed and ran the affairs without any intervention by Frankenberg, I think I should have something a little more specific on it.

Mr. Gallagher: Don't you think Mr. Burling's
3138 question is pretty specific?

The Court: The way I would answer it, if I had to answer that, would be that "I was very active. I over-looked it. I spent hours having complete control over it." I would not say, "That became necessary"; it is so vague.

Mr. Gallagher: Meier did not talk in English; his Swiss was translated by Mr. Laufer. I don't know that that was—

The Court: I will find that he was president and was chief officer at all times from 1932. If your record supports that without my finding it, you can still get it in; if it does not, you can argue on the record. It does not seem to me that there was a very clear-cut issue on that as to which I could make a finding.

Mr. Gallagher: I might submit, without laboring the point, that there is certainly nothing in the record to reflect that Frankenberg or von Opel had anything to do with the corporation.

The Court: I have some recollection that Frankenberg had some communications after that.

Mr. Gallagher: No, sir. I can assure you the record is silent.

Mr. Burling: So far as I can recall, the last evidence relates to Shreveport.

The Court: And that was in 1940?

Mr. Gallagher: Yes, Your Honor.

3139 Mr. Burling: I may say, Your Honor, that the principal assets of the corporation were not disturbed at all by anybody. That is, so far as the record shows, nobody did anything about the management part of the brewery, and nobody did anything about the management of Spur.

Mr. Gallagher: I might submit that nothing was done with the assets from the time Fritz von Opel purchased the companies.

The Court: If there is any contradiction, you can argue it.

"At all times from 1932 Dr. Meier, President of the Corporation, was chief officer of the Corporation. Dr. Meier testified"

so and so. You can copy that word for word when you see what it is.

Mr. Gallagher: All right.

Mr. Burling: Frankenberg did testify that after the hostilities were over, he personally selected the documents in Switzerland to be brought here for use of counsel.

Mr. Gallagher. We will agree with that. That was in 1947. He was back in Switzerland, and we requested that he get the books.

The Court: You can copy that part of the record in. I do not want to make a formal finding on what the significance of that is, because it was never in issue.

3140 Mr. Gallagher: How does your finding read, Your Honor?

The Court: "At all times from 1932 Dr. Eugen Meier, President of the Corporation, was chief officer of the Corporation. Dr. Meier testified that—"

Mr. Gallagher: Do you want me to give this language to your secretary to be typed—"Dr. Meier testified that"?

The Court: You had better give that to her so that I can paste it in here. I want to give it to Mr. Burling when I get through and let him have it typed up.

Mr. Gallagher: "* * * testified as follows: Record page 2299:

"'Question: Did there ever come a time when you did have a direct hand in the management of the affairs of the corporation?'"

The Court: Just give that to her; she will write it up. I want to paste it in here, so that he can copy it from

this. That is finding No. 40. I have the first part of it. Just say:

"Dr. Meier testified as follows:"

Then copy that.

Now, finding No. 44.

Mr. Gallagher: Your Honor, I might state with respect to finding No. 44 that I have a few general remarks that I should like to make to you and bring to your attention which apply also to findings Nos. 41 and 43, if
3141 you will look at those for just a moment before I continue.

The Court: I have those handy; I can follow you, I think.

Mr. Gallagher: In finding No. 41 you said:

"Hans Frankenberg acted at all relevant times as managing director of Uebersee Finanz-Korporation as agent for Wilhelm von Opel."

Finding No. 43 reads:

"Hans Frankenberg, as such agent, from the spring of 1932 until the date of vesting, exercised control over the investments and activities of Uebersee-Finanz Korporation."

Then, finding No. 44 reads:

"Fritz von Opel, from time to time, from the spring of 1932 until the date of vesting, engaged in activities in behalf of Uebersee-Finanz Korporation and gave instructions concerning its investments."

Those three can basically be more or less lumped together, as we see it. This is the point I want to stress a little more than the remaining ones. I do not think it is going to take too much time. I should like to recall to your recollection what the record is with respect to these invest-

ments and who made them, who gave directions, who controlled them, and who controlled the activities.

First of all, I won't labor as to what Frankenberg
3142 had to say; I know you will recollect what he said.

He said, "Fritz did the investing, and I gave him banking advice."

As Mr. Meier said, at page 2262, Fritz von Opel always controlled and directed the investments and policy of the Uebersee-Finanz Korporation. At page 2272 he said:

"Moreover, as I stated before, the policies as to investment and business transactions issued from Mr. Fritz von Opel."

At page 2299:

"The technical and financial management was in the hands of Fritz von Opel."

Next, as to Mr. Adolph Gaeng, one of the directors, as to his affidavit it is stated:

"It is stipulated that he knows of his own knowledge that Fritz von Opel controlled the policies and operation of Uebersee-Finanz Korporation."

Mr. Burling: Did counsel use the word "stipulated"?

Mr. Gallagher: It was stipulated that that would have been his testimony if he had testified.

Mr. Burling: That certainly is not what happened.

Mr. Gallagher: I think the Court recollects. Von Opel himself goes into great length in testifying he carried on the investments.

Now, we get down to a few more pointed factors, one
of which, because of the nature of whose witnesses
3143 they are, might lend more weight to their testimony than perhaps the testimony of plaintiff's witnesses.

First of all, Mr. Hoffacker, you will recollect. I am reading from his affidavit in Defendant's Exhibit 8, just to refresh your recollection about that.

"My only communications, written or oral, regarding investments, * * * were with Fritz von Opel."

Then he says, folio 210, taken orally, May and June, 1932:

"I discussed with Mr. von Opel investments to be made in this country."

He goes on with the discussions. He finally got orders from Fritz; as a result Spur, Harvard, and so forth, were bought.

Folio 218, October, 1931. There is the recommendation to buy stock from Burden, Cole, and the making of an offer of $5 for the purchase of 50,000 shares.

That is his testimony as to whose agent he was. His affidavit states categorically that at the time when they did that questioning, he was agent. He said he was Fritz von Opel's agent and aided and gave him advice in his investments.

Now we get to Crittenden. What does Crittenden say about these American companies and who controlled the investments and policies?

Page 1897 of the record:

3144 "Did Mr. Hoffacker make any reference to the source of the funds he referred to?"

"Answer. Yes."

"Question. What did he say?"

"Answer. He said that he was agent for and adviser to Fritz von Opel, the son of Opel, the automobile manufacturer in Germany, who had sold that company to General Motors."

That was Mr. Crittenden saying that.

Page 1899. Hoffacker.

"* * * described * * * that he was an agent"—this is Crittenden's testimony—"for Fritz von Opel and guided him solely in all of his investments in the United States."

That is out of Mr. Crittenden's mouth here.

At page 1942 of the record, Crittenden again states:

"Question. Regarding your first meeting with Hoffacker, with relation to Mr. von Opel, I believe it was your testimony on direct examination that Hoffacker told you that he was an adviser, an agent, of Fritz von Opel; is that correct?"

"Answer. Yes."

"Question. And it is your further testimony that he never deviated from that statement; is that correct?"

"Answer. Never."

Now, page 1909. What does he have to say there?

3145 He was asked if he recalled what Hoffacker said when he introduced Mr. Frankenberg to him. That was in Montreal.

"Answer. Why, he explained to us that Dr. Frankenberg had assisted or was a representative of Fritz von Opel and knew his father in many ways."

That is all Crittenden.

Let us go to Mr. Houghland himself. We have this record that Crittenden himself—one of the Government witnesses—now states that Hoffacker was von Opel's agent; that Hoffacker was influencing investments and policies.

Mr. Burling: If Your Honor please, counsel omitted to read that Mr. Crittenden said Hoffacker described the very Opel Motor Works in Germany intrusted to the son by the owner. That is at page 1899 of the record.

Mr. Gallagher: You can read any part I have omitted, Mr. Burling, when I get finished. I am reading the excerpts we have here.

Bear in mind that the Hoffacker affidavit is in evidence, offered by the Government as part of Defendant's Exhibit 8.

Houghland, at page 1852 of the record, says:

"Question. And on many occasions since 1932 you have followed the instructions of Mr. Fritz von Opel, have you not?

"Answer. Very, very few occasions. I can't recall any instructions from Mr. Fritz von Opel, although it
3146 is perfectly possible that there were. I followed the instructions of Mr. Theodore Hoffacker."

He does not say anything about Frankenberg; it is Hoffacker.

At page 1854 of the record, the same Mr. Houghland testifying, the question was asked:

"He"

meaning Fritz von Opel—"gave you a completely free hand, didn't he?"

"Answer. Somebody did, after some period of turmoil. After the company was shown to be profitable and, I hope, well managed, why, there wasn't much interference in later years, particularly after Mr. Hoffacker got out. Mr. Hoffacker occupied a very dominent position as a man giving me instructions."

Having shown the place that Hoffacker occupies in here by Fritz von Opel's statement—by his own statement—and by Crittenden's statement of Hoffacker being the man controlling the investments and suggesting to Fritz where to invest, and with Houghland himself stating that Hoffacker is the man giving him orders, we submit that the finding that Frankenberg was controlling the investments—and there is not one line in the record that he is controlling those investments, other than the story about getting Fritz to bail himself out of the Shreveport deal
3147 —as a matter of fact, the only two conversations that have really linked Frankenberg at all with this picture, even according to the Government's theory, are with respect to Zurich in 1937 and with respect to New

York in 1937, a talk with Houghland on one occassion, and on the other with Crittenden, and in each instance they were asked for money for different ventures. Houghland was not asked for money for the Spur Company. Crittenden was not asked for money for Oil Production, Incorporated.

The Court: There was some testimony by Houghland that there came a time when he did seek freedom with regard to Spur.

Mr. Burling: With regard to setting up another set-up.

The Court: And then Fritz von Opel telephoned him, I think, that he would like to go along with him and agree with him, but that Frankenberg would not permit it.

Mr. Gallagher: That was generally after that. That involved new capital.

The Court: That is right; new capital.

Mr. Gallagher: That was a different venture. That was not Spur. That was not one of the subsidiary corporations.

The Court: That is a circumstance. The one I am talking about is No. 44.

Mr. Gallagher: I am taking 41, 43, and 44 all together. No. 44 has to do with Fritz being engaged in activities on behalf of Uebersee. Our suggested finding on 44 is:

3148 "Fritz von Opel continuously from the spring of 1932 until the date of vesting, acting under a full power of attorney from the officers of the plaintiff corporation, engaged in activities of the plaintiff corporation and gave instructions for its investments."

The Court: Do you want No. 41 changed?

Mr. Gallagher: We feel as to No. 41 that there is nothing to support the relevant times phase, which is the period of the outbreak of the war until the time of vesting, to reflect that Frankenberg was acting as Wilhelm's agent during that period of time.

Then, No. 43 says that:

"* * * from the spring of 1932 until the date of vesting," Frankenberg "exercised control over the investments and activities of Uebersee-Finanz Korporation."

The investments are these American corporations whose stock has been seized.

Finally, the record is completely barren of any instructions he was giving the corporations or any actions he was taking with respect to the investments during the relevant time from December 7, 1941, until the time of vesting. He could have given five thousand orders in 1933.

The Court: Well, you see, I have a little different viewpoint. You are speaking of a technical view in that
3149 regard. He gave instructions previous to the time you are talking about, and unless there was some evidence of cutting off precipitately it is logical to draw the conclusion—it is reasonable to draw the conclusion—that he would continue that. I had definitely in mind—this Frankenberg situation gave me the impression or gave me the belief—that if any major conflict or problem would occur, he would be the guiding genius. He might not have to act very often.

Mr. Gallagher: Frankenberg came to this country in 1940, applied for American citizenship in 1941, and became an American citizen.

The Court: Of course, I am not dealing with that; I am dealing with what he did for Wilhelm.

Mr Gallagher: I am talking about the relevant period of December, 1941, until the date of vesting in 1942. Under the conclusion you are arriving at, with nothing affirmative shown in the record whatsoever, you would make Frankenberg an enemy agent, acting on behalf of the enemy, during the period of the war, at a time when the man has an appli-

cation pending for United States citizenship, which is granted to him. I think it becomes, when you keep in mind that factor, somewhat illogical.

The Court: Do you want to say he acted as agent up to the outbreak of the war—is that it?—instead of to the date of vesting?

3150 Mr. Gallagher: There is no evidence whatsoever that he was acting in any agency when, even following Your Honor's tentative conclusion, after 1940—not 1941, but after 1940—there is not a thing in this record—

The Court: Here is what I am getting at. If I know that Mr. Fairless is president of United States Steel and carries on up to a certain time, and we haven't any word to the contrary or any action to the contrary—that he acted right along—do we stop right at the very moment with respect to which evidence stops? In other words, if a man has been engaged in an activity over years, and then you stop with a piece of testimony as of a certain date in 1940, does that mean, because the testimony stops at that date, your deduction stops at that date?

Mr. Gallagher: I think with respect to that the Government has the burden of proof of carrying it. It was during the relevant time period that something was done with plaintiff corporation or with the subsidiary corporations. Were the Americans being watched? Was there anything in this country that could be used to hurt us?

The Court: What I am getting at is that when a situation is established and it runs over a number of years, does the mere fact that the testimony with regard to it stops at a certain date mean that the Court could not draw the conclusion that it continued?

3151 Mr. Gallagher: No. I think we do not have a Trading-With-The-Enemy Act until the date war is declared.

The Court: I understand.

Mr. Gallagher: The burden is on the Government.

The Court: To make a homespun expression: I have been devoted to my family for years. Everybody knows it. The last time I made any overt act of expression was on December 25. Now, does the devotion stop there? Is there a presumption that it stops? Or don't you have to show that it stops? That is what I am getting at. They don't have to come in here and show that control exists over a long, continuous, unabated period of time; that the burden is on them to keep showing that afterward. It may be after 1941, when he is an American citizen, he is pretty quiet about it.

Mr. Gallagher: I do not think a man who is going to apply for American citizenship is going to commit any overt act on behalf of an enemy.

The Court: He is going to be careful.

Mr. Gallagher: I think you are finding he is acting on behalf of an enemy after he has an application in to become an American citizen, with not one thing in the record to show any action with the subsidiary corporations or with the plaintiff corporation.

The Court: I will give you a chance to be heard, Mr. Burling, before I make up my mind. Maybe we could say:

3152 "From the inception of this firm down until 1940 Frankenberg handled in behalf of Wilhelm all the affairs, and all the evidence with regard to continuation is nil. However, there is no evidence showing that there was a cessation of it."

Mr. Gallagher: That would be satisfactory with the plaintiff.

Mr Burling: Since we run the risk—I personally think the chance of reversal is negligible—I hope—but since we run the risk, I think the proposal makes that risk greater rather than less. In other words, I think it would be helpful if Your Honor would draw an inference of fact.

The Court: I shall. I can do it that way. In other words:

"I find from the facts that Frankenberg at the beginning of this transaction, as of the time the shares were deposited with him and the key was turned over to him—from that time down until 1940, continuously acted as agent of Wilhelm von Opel in the directing of all major policies of the corporation by reason of that last act being in 1940; that he continued to do it to the time of seizure."

If it is illogical and unreasonable, then the Court of Appeals can say this conclusion of facts is silly. But that is my conclusion.

3153 Mr. Burling: We have no objection.

Mr. Gallagher: You mean by that you draw the inference?

The Court: No, I make the finding.

Mr. Gallagher: That he was the agent from the time of the key until 1940, is what you said; is that correct?

The Court: No; I say from the facts or from the evidence adduced—that is what it really is—that beginning as of the time of turning over the key and continuously through 1940 the evidence shows he exercised the major control with respect to the policies in behalf of Wilhelm von Opel, in behalf of the policies of Uebersee and the purchase of securities, and the like; and there being no evidence with regard to the matter from 1940, the Court finds as a fact that he continued to do so.

Mr. Gallagher: That is all right.

The Court: In other words, I am perfectly willing to have the Court of Appeals know, Mr. Gallagher, that I did not make my findings of fact on any piece of evidence that occurred after 1940. I will grant you that consideration. But I must say that my own judgment is, when an agent of that importance goes on for all that period of time, making major decisions of policy, that he did not stop

instantly, unless you show he did—unless you have some glaring evidence that he did. I do not want to go into the facts of the matter to any extent. I was very firmly
3154 convinced of Frankenberg's agency on behalf of the father. He did not answer the questions of Mr. Burling directly on that very point. He hemmed and hawed about it. I marked it down in my notes every minute he did it. It was the very heart of the case. Here is a brilliant man—an adviser. He was asked a question, and he did not answer it directly. Any man as brilliant as he, knowing all the facts, would have answered immediately. But every time we got around to Frankenberg's agency, there was some evasiveness about it. The evidence was too strong—just overwhelming, in my judgment—on that point.

Well, you have my idea about it.

Mr. Gallagher: Will that be substituted, then, for finding—that would be finding 43, as I would read it.

The Court: I think that is all right.

Mr. Burling, will you rewrite that in the light of my statement? I stated it very loosely, but you get the point.

Mr. Burling: I think so.

The Court: I want to let the Court of Appeals know that I acted on evidence that the agency ended in 1940, but that the continuendo of that control over that long period of time, of probably six or eight years, indicated to my mind that it kept on and continued, in the absence of some very powerful evidence to the contrary, which I did not feel was produced in this case.

Mr. Gallagher: All we are asking basically in
3155 finding No. 44—the only change in No. 44 basically—is that we want in there that Fritz was acting under a full power of attorney from the corporation. I do not know whether Mr. Burling has any objection.

Mr. Burling: Yes, I object on the ground that it is contrary to the record. Fritz acted at least up until the Gold Case affidavit intermittently under a power of attorney.

Furthermore, according to Dr. Meier's testimony, he was kept completely away from the management of the company, at least up until the Gold Case.

The Court: Whatever the record shows, if it was intermittently.

Mr. Boland: And thereafter continuously.

"Fritz von Opel, from time to time until 1935, and thereafter continuously until the date of vesting."

Mr. Burling: They would have Your Honor find Fritz von Opel continuously from the spring of 1932 acting under a full power of attorney, and so on. That is directly contrary to the evidence. They are still going directly contrary to what the theory of the Gold Case was.

Mr. Boland: Do you object to "after 1935"—stating that he acted continuously?

Mr. Gallagher: "Continuously" merely means that this power of attorney was outstanding at all times from the spring of 1932.

Mr. Burling: I do not believe the plaintiff corpo-
3156 ration should ask your Honor to find as a fact something directly contrary to what the plaintiff corporation swore to in the Supreme Court.

The Court: No, I am not going to do that if it is contrary. Is it contrary?

Mr. Gallagher: I do not think it is contrary. Furthermore, it is a peculiar remark of Mr. Burling's, under the circumstances.

We would like you to find that what Hoffacker said in the Gold Case was true also.

Mr. Burling: What Hoffacker said in the Gold Case does not estop the Government of the United States.

The Court: I don't know whether it is estoppel, but what is the issue here? What do you want the power of attorney to do?

Mr. Gallagher: We want merely to show that under a

full power of attorney he acted continuously from the spring of 1932, which he did. It is in the Gold Case that he had this power of attorney.

The Court: I will find anything he said. There is no conflict on that.

Mr. Burling: The relevancy of this relates to the next finding. My friend is trying to erode Your Honor's finding that the management was ultimately in Frankenberg's hands.

The Court: Do you admit that from time to time 3157 he had powers of attorney until 1935?

Mr. Burling: Yes.

The Court: And that after 1935 it was continuous?

Mr. Burling: I don't know whether it was continuous or not. I frankly can't state. If my friend can show it to you in the record, I may. I know it was discontinuous prior to 1935.

Mr. Gallagher: Our record references are Plaintiff's Exhibit 74 and pages 630, 2308, 2309, 2468, and 2469.

Mr. Burling: I can't check those references that fast, Your Honor. My friend referred to Plaintiff's Exhibit 74, which is a power of attorney made out in 1932, which expired, in accordance with the affidavits of Meier and von Opel, filed in the Gold Case. It does not establish a continuous power of attorney, but quite the opposite.

Mr. Gallagher: Let us drop it and leave it as the Court found it before.

Our next one is No. 45. Counsel for the plaintiff had moved that this be stricken. However, in the light of your new finding on 43, that very much covers it, except that, at least, to be in accord with your finding No. 43, with the record testimony, and with your theory of the case, we still feel should read:

"carried on with the guidance and direction of Hans Frankenberg, agent of Wilhelm."

3158 There isn't anything in the record to indicate that Wilhelm ever gave him any orders.

The Court: I understand your point on that. I started at one time to write in my opinion a great many reasons why I reached this conclusion. It would not be very helpful. If I started giving reasons, it would be just like a jury coming out and saying, "We find this because of this, that, and the other." It is bad practice. I can assure you I gave that matter very careful study, and I reached this conclusion. I am going to leave No. 45 as it is.

What is No. 49?

Mr. Gallagher: In No. 49 we are changing the fact. In your finding you say a usufruct was created by the gift agreement, while, as a matter of fact, the affidavit stated that a usufruct had been created pursuant to the gift agreement.

The Court: This is not what I say; it is what Fritz von Opel said. Did he say it had been created by an agreement?

Mr. Gallagher: "Created pursuant to," is what he stated in the Gold affidavit.

The Court: Is that all right, Mr. Burling?

Mr. Gallagher: That is the theory of their case.

Mr. Burling: I don't see the relevancy of it, but I don't care.

Mr. Gallagher: Just one other addition, and that 3159 is at the end, where you said:

"* * * and he further stated he had bare legal title."

If we ask you to add:

"* * * plus 20 percent of the income."

He also stated that in the affidavit, and you are talking about what is stated in the affidavit.

The Court: That is right; there isn't any question about that.

Mr. Gallagher: So "plus 20 percent of the income" is what is in the affidavit.

The Court: That is not going to hurt it.

Mr. Boland: In No. 51, the only point we have is the fact that insofar as usufruct had been established and waived, we do not think it is in conflict at all with the theory of the Gold Case. Our position is that the usufruct, if the usufruct had been established and waived, is not in conflict with the theory of the Gold Case. The waiver came subsequent to it. So our proposed finding is insofar as there was usufruct established.

Mr. Burling: That statement is clearly not supported by the record. The only two people who testified that there was waiver were Fritz and Dr. Gros, and they said the waiver conversation took place in the midsummer or autumn of 1935, as these Gold cases went on up through the Second Circuit.

3160 The Court: Mr. Burling, there isn't any doubt on earth but that you are entitled to a finding, and I will make it just as plain as it can be. It is utterly inconceivable to me that Wilhelm von Opel, with the case pending in the United States, would have waived his interest so that he would have lost it. I just can't believe it. He is soo smart. All of them are. I don't know that this, however, is much of a finding of fact, if you want to strike it out.

Mr. Burling: I would like to have it in as is.

The Court: If the Court of Appeals finds it inconsistent, I don't know what they will find. You can argue that in the Court of Appeals without my finding it. I am inclined to have it come out. I think I will strike it out. That is really not a finding of fact. I will strike it out entirely.

Now, I simply can't believe that he would have waived his right, in finding 52.

Mr. Gallagher: We say, Your Honor, that the mere finding you make that in 1935 waiver was discussed but never abandoned left us with four or five different bases upon

which it could have been. We were not sure whether it was because of foreign currency regulations or because the agreement was invalid—

The Court: I just think he didn't waive it. He talked it over with Dr. Gros. Here was one of the major things he was trying to accomplish in this country—the getting of that gold over to Germany. The argument that your side used was that he just didn't want to be bothered with
3161 this thing any more. He didn't want to be bothered with it—with this usufruct. He wanted to get rid of it in this form. That is one side.

The other side is that they made formal waiver of that, which would defeat every possible chance of his getting the gold which was over here, which he had been trying to do for years. He simply wouldn't do it. Goodness knows, these people are not stupid people; they are smart people.

Mr. Boland: Our position has always been that the father knew nothing about this Gold Case. I think that is clearly evident from the fact that these letters were written to the German Government. They were introduced in the Gold Case. He was claiming he had no rights, in any manner, semblance, or form, under this gift agreement. It is completely inconsistent with the whole theory of the Gold Case.

The Court: He claimed he had no rights?

Mr. Boland: He claimed he did not want any and that he was completely finished with them. The first letter was written October 5, 1935, at the time this Gold Case was going on. It was written to the German Government—and letter after letter was written to the German Government. He has taken a position which is absolutely contrary to the whole theory of the Gold Case.

The Court: That is not what I say.

Mr. Boland: I do not see how it is such a far step
3162 to say that he is going to waive all the rights he has when he is telling the German Government in open public that he does not have anything and he does not want anything.

The Court: What was his motive in getting rid of that?

Mr. Boland: His motive in getting rid of that was simply and solely this: that because the gift agreement of 1931—because of the extreme desire of the German Government to get foreign credits, which is what they wanted—and I think the record is quite clear they were after every nickel of foreign credit they could get—they were after Wilhelm von Opel either to establish a usufruct to bring this back or to upset the agreement, to get all those foreign credits here in the United States. After all, there was $4,000,000 worth of foreign credits tied up here that Fritz von Opel had slipped out from the German Government. They wanted that back, and he was fined in connection with this.

The Court: Yes.

Mr. Boland: Therefore, after this thing was over—the father's fine—his main object—and it is clear from the letters what they were trying to do was to convince the German Government that nothing more—that the father didn't want to have anything more to do with this. He never claimed he had any rights; if he had them, he didn't want them.

The Court: Let us see, now. If he had won his Gold Case, he would have taken the gold into Germany, wouldn't
3163 he?

Mr. Boland: Oh, no.

The Court: Where would it have gone?

Mr. Boland: It would have gone to Switzerland.

The Court: Oh, yes; of course. He would not have taken it directly to Germany. It would have been involved in the claim of the German Government, which wanted to get it.

Mr. Boland: If the usufruct had been established, they would have been right in there for it. As a matter of fact, he would have been subject to death in 1937 or 1938 for not having reported his interest and his rights in this usufruct. He never reported it, and they gave him plenty of

time for immunity or amnesty statutes. They put through amnesty statute after amnesty statute.

"All right. We will let bygones be bygones. But if you report it now, we will forget it."

Never once did he report that he had an interest.

Mr. Burling: None of the reports here in the record—

Mr. Boland: The Judge asked me what my theory is.

In 1935 he is writing to the German Government, stating his position, which is absolutely contradictory of the theory of the Gold Case. So is it a far step to say he is willing to forget it forever; he does not want it?

The Court: The only argument I heard you make on that waiver—and I listened to it very carefully, because I asked you to argue that—the only argument I heard made on that was that he wanted to get out of this; he just
3164 wanted to wash his hands; he had an oral agreement to waive it. As you say, that is directly contrary to this suit here in America. What is the evidence that he did not know about this suit?

Mr. Boland: Well, we have Fritz' statement that he did not tell him anything about the agency until he went back there. We have the father's statement that when he was asked by Fritz whether he wanted to ratify and set up a usufruct, he said no, he didn't want to have anything to do with it.

The Court: I am talking about this suit in New York. What is the evidence that Wilhelm did not have any knowledge of it?

Mr. Boland: The father's statement, himself; Fritz' statement—

Mr. Burling: May I ask for the record reference as to where Wilhelm said he had no knowledge?

Mr. Boland: Specifically, he did not state that he did not have any knowledge. The question was never asked of him.

The Court: If I did not make this finding, I think probably I would be reversed in a minute. If the evidence does not support it, I would have to grant you a rehearing.

Mr. Gallagher: In that connection, I might say I am premature at the moment, because we do not have an affidavit to support it—we are going to ask your indulgence, before any judgment can be entered, to move for a rehearing on the ground of newly discovered evidence.

3165 The Court: I am afraid I shall have to make my finding and then let you do it. If you want to make a motion for rehearing on newly discovered evidence, I will let you do it, but I have to act in an orderly way on it.

I think I will hear Mr. Burling on this.

Mr. Gallagher: There is just one additional point which has a bearing on this. You will recall Mr. Burling had Mr. von Opel on the stand on cross-examination and asked him whether or not he had told Dr. Gros about the Gold Case. Dr. Gros himself testified, I believe, that he was unaware of the Gold Case and that Fritz von Opel had not told him. Fritz testified he had not told Dr. Gros about it.

The Court: Did Frankenberg have an affidavit in connection with this?

Mr. Burling: I do not have a copy of the affidavit, but Fritz' affidavit was sent to him in 1935.

Mr. Gallagher: That is not in the record, is it?

Mr. Burling: Yes, that is in the record.

The Court: Let me hear from you, Mr. Burling. This goes right to the heart of the case. I felt pretty positive about it. I am trying to refresh my recollection on it.

Mr. Burling: I did not realize we were going to have a reargument.

The Court: No, neither did I. I want to get it back in my mind.

3166 Isn't it correct that Gros testified—he brought into the testimony some letters, as I remember it. Then, the testimony of some of them was that there was an oral waiver.

Just as Mr. Boland says, it seems to me, in the first place, unusual that the man who had held control over this usufruct for such a long period of time should give up that large sum of money at that period; secondly, it is beyond belief that he would do it with this case pending over here for it would absolutely ruin this case and ruin something that has been fought for.

I had not the slightest idea that Wilhelm von Opel had not known about this Gold case; I thought the evidence was pretty strong that he had.

Mr. Burling: I did not know of any that he did not, but there are other pieces of evidence indicating nonwaiver, which Your Honor also recalls. To me, one of the most persuasive ones is that the two people who could do the waiving—that is, Wilhelm and Marta—were both examined on depositions, and my friends omitted entirely to ask them anything about the waiver.

The Court: Yes, I remember.

Gentlemen, I think I shall have to find it. That is the heart of what I found.

Mr. Boland: If the basis for this finding that there was no waiver is solely on the one fact that the question
3167 was not asked of the mother or father—

The Court: No, that is not solely the thing. You certainly have a great many things. In the first place, here you have writings and you have steps which deal with tremendous interests, and pains taken to support them; and then in a most informal way you find some oral agreement being set up to waive it. That is a very striking circumstance. There is a lot of money involved. As you say, it would defeat this case in the United States if it were known. In the absence of very powerful testimony showing that Wilhelm did not know about this case, I would certainly think he knew about it. How could that go on—all that tremendous activity go on—without his knowing about it, unless somebody testified he had no idea about it, and it was very clear?

Mr. Boland: Your Honor, is it reasonable? Here is the mental hurdle we have all had in respect of your finding: Is it reasonable to assume that a man who had gone through what Wilhelm von Opel went through in respect of this gift agreement—criminal proceeding where he was threatened with prosecution, threatened with everything, and finally fined a very sizeable amount of money—a man who is independently wealthy—is it reasonable to assume that at the time—the very time—when he is being fined in Germany, he would permit, through his agents, a suit to be filed in a United States court which states that he
3168 has a usufruct, when he has been arguing to the German Government that he has not?

The Court: When he is fined at the behest of Hitler, he can do almost anything.

Mr. Burling: Furthermore, I have here an exhibit which shows he reported use of a usufruct.

Mr. Boland: A tentative usufruct, which makes an in personam claim.

The Court: I gave this question of waiver very careful thought and asked you to argue it. I did make this finding. I am as firmly convinced he did not do it as you are that he did, Mr. Boland. Unfortunately for you, I have one view. If I thought he had orally waived it, I would have had to find in your favor.

Mr. Boland: You had no question in your mind that those letters were written to and discussed with the German Government and that Director Wilhelm testified Gros did come.

The Court: The fact of waiver is just as astounding to me as the writing of letters.

Mr. Burling: Most of the letters were in 1937. This is in 1937. That is another piece of evidence, I think, that sustains your Honor's finding. The purported oral waiver was in 1935. Yet Gros prepares a letter in 1937, two years later, in which he says the parties intend to waive, not that they have waived.

Mr. Boland: The significance—and I think it is very important—is that at the time they agreed to waive
3169 —we take this position—their waiving was a waiver or certainly—and this has always been our position—certainly by 1937, when Director Wilhelm told them then he could not take any action—then at that time a waiver becomes effective. It is certainly not reasonable to assume they would publish an agreement to waive during a time when they were negotiating with the German Government to find out what was going to happen to them if they did waive.

The Court: If your weight of the evidence is overwhelming, you can reverse it. That is my conclusion.

Mr. Boland: Our request is for additional findings.

The Court: Where are you?

Mr. Boland: We are at finding 52. We have a separate request for more specific findings.

Mr. Ingoldsby: May I point out one document in evidence which I believe has been overlooked? I speak of a letter of August 2, 1935, which Fritz von Opel wrote to Dr. Gros. That was the one in which he discussed with Dr. Gros the question of waiver. He spent pretty nearly a whole afternoon on the witness stand squirming because he had failed to state in that letter to Dr. Gros anything about the statement that the usufruct was established, as stated in the Gold Case.

The Court: Mr. Boland, what is it you want made more specific?

Mr. Boland: We now know the basis of Your
3170 Honor's findings, and it may help clarify it if it were agreed on appeal that it would be limited to that basis. I don't know whether you found the agreement was insufficient under German law or whether it was due to the foreign currency regulations.

The Court: No; I thought I made it perfectly plain that it was in fact made.

Mr. Boland: That is the only thought I had.

The Court: In other words, I do not think Wilhelm ever said orally or otherwise, "I hereby waive any interest of whatsoever kind I have in this property." I don't think he said that.

Mr. Boland: As long as it is clearly understood as to what the basis is.

The Court: "was never waived or abandoned by any statement or act"—I will say that—"by any statement or act."

Mr. Boland: As long as we have the basis, that is all we need.

The Court: What I say here won't go in the Court of Appeals. I will write in here:

"* * * by any statement or act of Wilhelm or Marta."

I will amend it that way, if that will help you some. I was not undertaking to say, in other words, if that is what you wanted me to say, that under the German law it could not be orally waived. If that is what you want, I did
3171 not intend to say that. What I did intend to say was that I did not believe—and I thought I wrote that, or made it plain—I did not believe they had in fact done as you argued they had done.

I was not impressed that he wanted to get rid of this whole thing. It was something he fought to sustain and hired lawyers to sustain, and accomplished it by getting possession of it. I don't think he gave it up as readily as doing it by oral act. He knew how to execute solemn instruments, if he had wanted to.

I also still think, subject to your differing with me, which you undoubtedly do, that he knew about this proceeding over here in America, having followed the matter as carefully as he did, and that his son would not go through with an important matter of that sort without his knowledge.

My whole idea of the matter is different from yours. We are, of course, fallible. I thought plainly that Wilhelm

followed this property pretty intimately through Frankenberg all the time. I felt it before the case ended. That is why I asked you to argue it very carefully. This is the finding I reached. I do not mind telling you the closest thing I had to decide was between this and whether the whole matter was a sham. I thought the weight of the evidence was this way.

I will change that as I have indicated:

3172 "* * * by any statement or act."

That will make it perfectly plain.

Is there any objection to No. 53? Did I get that right?

Mr. Boland: Just a few things; very minor changes.

"A person having a usufruct * * *."

I think basically what we have here is exactly the same as this, with the exception of (d), and in your opinion you spelled out the three views. This finding, however, it seems to me, is finding 2, under one view. It seems to adopt the third view, and if the Court is going to adopt one of the three views, the logical view to adopt is the middle view, because that is what is stated in Hachenburg's draft.

The Court: Let me get this in my mind. What do you want changed?

Mr. Boland: I would like to have (e) in your findings changed to the rights which are set forth in Hachenburg's draft, which is the middle view, which is a right to vote in respect of—

The Court: I am perfectly willing to cover all dividends.

Mr. Boland: Well, certainly we do not want the strongest one against us incorporated.

Mr. Burling: I am perfectly willing to have plaintiff's proposed (d) substituted for Your Honor's (e). I should like your Honor's finding otherwise to remain un-

3173 changed.

The Court: All right.

Mr. Burling: My friend's proposal actually works in another change which I object to.

The Court: I will incorporate Mr. Boland's (d) as my (e).

Mr. Boland: That accomplishes it pretty much.

The Court: I did not see that.

Mr. Boland: I thought it was inadvertent, because in your opinion you spelled out the three.

On finding No. 54, the only thing we have is an addition:

"* * *. However, Wilhelm or Marta von Opel never demanded nor received any income of any nature from the usufruct."

The Court: That is correct, isn't it, Mr. Burling?

Mr. Burling: With the exception of certain sums—rather small sums—paid to them when they were out of Germany.

Mr. Boland: You don't claim they came under the usufruct, do you?

Mr. Burling: They came out of the plaintiff; I don't know whether they came out of the usufruct.

Mr. Boland: They did not come out of the plaintiff; they came out of Fritz von Opel.

Mr. Burling: That is not so.

The Court: I will include that; then you can add
3174 the other if you want to.

Mr. Burling: Yes, I would like it added.

The Court: You can say, "Fritz von Opel"; whatever the record shows.

Mr. Boland: How much they received.

The Court: "Fritz von Opel advanced moneys for a trip" so and so. You can work that in there.

Mr. Burling: I do not know what procedure I have to work it in.

The Court: I have put in here:

"Neither Wilhelm nor Marta von Opel ever received or demanded any income from"—

Mr. Burling: It was the plaintiff corporation.

The Court: "plaintiff corporation."

Mr. Boland: But it was charged to Fritz von Opel on the books of the plaintiff corporation, so that is still Fritz von Opel.

The Court: Whatever the record shows.

Mr. Boland: It shows it is charged to Fritz von Opel.

Mr. Burling: The record shows it is funds taken from the plaintiff corporation.

The Court: All right, "plaintiff corporation." "on occasions paid."

Mr. Boland: "expenses for a trip to South America."

Mr. Gallagher: "and paid for shooting stag in Hungary."

3175

The Court: You can dictate that. I will mark that.

"Plaintiff corporation on occasions paid expenses"; and then I will say, "dictated."

Now, why do I have to make a lot of findings of law?

Mr. Gallagher: Your Honor, I have to make one other request as to No. 57. That is the last one. I would like that to read:

"Fritz von Opel is 50 years of age and has no issue"; and then I would like to go further and say:

"His father, Wilhelm von Opel, died in 1948, and his mother, Marta von Opel, is at present 75 years of age."

The Court: That is all right. Do you want to say anything about the sister?

Mr. Gallagher: No.

Mr. Burling: If you are going to discuss conditions now rather than condition at the time of vesting, which we contend is relevant, I think Your Honor should also find that she is now alive.

Mr. Gallagher: The Court has found that she is now alive. I merely said she is 75 years of age.

Mr. Burling: I am talking about the sister.

Mr. Gallagher: There is a finding showing that she is living in Switzerland. I presume she is not 6 feet under.

3176 The Court: Gentlemen, I shall have to leave here in four minutes. Why do we have to have all these conclusions of law?

Mr. Gallagher: Changes?

The Court: Yes.

Mr. Gallagher: Because we think the conclusions as they now stand, Your Honor, if I may say so, are not fully accurate, in the light of some of the changes in the findings and some of the suggestions that have been made.

The Court: I will tell you what I am going to have to get you to do in these findings of law. I had to make an engagement. I thought we would get through with this much sooner. I should not have thought that.

Mr. Gallagher: Your Honor, we would like to point out one thing in your opinion. You make reference, inadvertently, on a number of occasions to the use of the word "ownership" in discussing the usufructuary. As your findings now property do reflect, and as the testimony of the experts on both sides reflected, the title is in Fritz. The parents have a usufructuary interest in this property.

The Court: "Ownership" is a very broad term. You can't be too narrow. When you have a finding as to the law of Germany and what the interest is, the fact that I called it "ownership" in my opinion is not going to prejudice you at all. As long as you have a good, clear find-

3177 ing of what a usufructuary interest is, if I refer to it as ownership it is not going to hurt you.

The Court of Appeals is not going to make its finding on my opinion. The only time they take findings of fact in an opinion is when we do not make adequate findings or make an adequate finding in this court. Then they scold

us for not having made findings of fact. I doubt if they take anything out of that opinion. They might read it, but they will take the findings of fact and conclusions of law as I see them. That is what they will do.

You will find over and over again that they have criticized our trial courts because we have not made findings of fact, and they have had to look to opinions for that very reason. They want us to be precise in what we find.

Do you need to debate these questions of law very much? Could you let me have it in writing?

Mr. Gallagher: We could submit that. Could you possibly give us two days?

The Court: On the conclusions of law?

Mr. Gallagher: We want to see the new findings of fact as they now stand, so that we may make some comment on them. If we could have until—

The Court: I am going to hand this to Mr. Burling. I hope he can read my handwriting. I will give you a copy.

What I want to know is, Do you need any oral
3178 hearing on your conclusions of law?

Mr. Gallagher: I think we can submit those in writing.

The Court: If you do, I will give you an hour some day.

Mr. Gallagher: We are going to file a motion to reopen on the basis of newly discovered evidence.

The Court: You had better labor pretty hard as to why you could not get it before you tried the case.

Mr. Gallagher: We did not know the person knew the story.

Mr. Burling: May I inquire what the Court expects me to do?

The Court: What I should like to have you do, if you will, is to take this draft entitled, "Plaintiff's Proposed Amendments of Tentative Draft of Findings of Fact and Conclusions of Law," and rewrite it for me and for Mr. Gallagher—the complete findings as I have made them.

These are the only ones in controversy, so the others you can just go right along with.

Mr. Burling: I will not be able to until I get the transcript.

The Court: Well, you might. I think I have written in here with pencil the way I found them. If you cannot understand my handwriting, I will straighten it out.

We are going to give you a copy of it anyway, Mr. Gallagher.

3179 Mr. Gallagher: Could we have until the beginning of the week, in the light of the reporter's statement that the transcript will not be ready for two or three days?

The Court: Oh, yes; I am not going to sign it without giving you a copy. If you need another hour or two some day, I will give it to you.

Mr. Gallagher: Thank you very much.

The Court: I want to be perfectly fair about the matter, of course.

If you cannot spell it out from my handwriting, Mr. Burling, and you do not mind coming to me, I shall be glad to interpret it for you. I do not want to have to do this all over again unless I have gone completely astray on this, because I have, I think, settled all of the findings of fact. On the conclusions of law, if you need an oral hearing on them, I will try to find a couple of hours for you.

All right.

(At 3:50 p.m. the hearing was concluded.)

* * * * * *

3182 PROCEEDINGS

Mr. Baum: If Your Honor please, I would like to inform the Court that Mr. Burling is unable to be here, because he has left for Sweden to take depositions in the

Bosch case, and possibly will not be around for several months.

The Court: By the way, gentlemen, it just occurred to me. I noticed the other day that, inadvertently, in disposing of this matter, in my opinion I wrote that the judgment will be entered dismissing plaintiff's case. That is technically an incorrect statement. It ought to be, "Judgment will be entered finding for the defendant." I should have put it that way. I do not know how I overlooked that. So I am going to correct the opinion, but the important thing is to get the order right. I mean, the opinion does not control.

What is it we have this morning, gentlemen?

Mr. Gallagher: If Your Honor please, I believe you set this time down so that we might discuss the proposed conclusions of law, however, reminding Your Honor of the statement at our last meeting, namely, that Mr. Burling should prepare the findings in the light of the discussion that had taken place before Your Honor. We have no intention of going back into the findings of fact except to point out two changes, which we think are quite obvious on the face that I believe Mr. Baum won't have any objection to them.

3183 The Court: All right.

Mr. Gallagher: The first of these is with respect to findings 20 and 21, more specifically 21. There it is found that:

"Thereafter, plaintiff invested these funds in various corporations and other assets in the United States and elsewhere, including the property vested by the Alien Property Custodian."

As Your Honor will recollect, the record in this case disclosed that after the sale of the Opel shares, von Opel placed the proceeds in a number of varied stocks, which ultimately were put into Spur, Harvard—the vested prop-

erties—and others, and then in 1934 and in 1935 these shares were transferred to the plaintiff corporation, so the plaintiff corporation did not invest the funds from the Opel shares in the vested assets, but the vested assets in fact were transferred from the plaintiff corporation.

The Court: That is true, is it not, Mr. Baum?

Mr. Baum: I do not think that is quite true, Mr. Gallagher, because I think your own books show that as of 1932, when Fritz acquired the stock of Uebersee, or the end of 1931, whenever it was, he also had a credit on the books of the corporation for the entire value of the property which his father had given to him; so that whether he invested them personally, he was still doing it on

3184 behalf of the corporation.

The Court: The corporation had not been acquired then, had it?

Mr. Baum: Yes. It was acquired in the winter of 1931 or early 1932.

Mr. Gallagher: If you will recollect the chart, the funds were held by von Opel, in different accounts in New York and the only funds that were transferred to the corporation for which a credit was set up on the books for von Opel were for the purchase of the million dollars in gold. The other shares were held for von Opel, and it was not until 1934 and 1935 that he transferred these to the corporation and received a credit of some eleven million Swiss francs.

The Court: Let me ask you this. Look at 21. Why won't we get it by saying:

"Thereafter, these funds were invested"?

That is all you need. There is not any question that it came into the possession of the plaintiff before the vesting, and I think the findings will show that.

Mr. Baum: That is the only concern I had.

The Court: I think they do. I am sure they do.

"Thereafter, these funds were invested."

You can say, if you want to:

"Later, before the time of vesting by the Alien
3185 Property Custodian, they became the assets of plaintiff corporation."

Put it in there, if you want to.

Mr. Baum: If Your Honor please, I would like to call Your Honor's attention to Mr. von Opel's affidavit in the Gold case, which says:

"I left New York or or about June 5, 1932, returned to Switzerland; thereafter I got in touch by cablegram with Mr. Hoffacker with regard to the investments of Uebersee Finanz-Korporation A.G. in the United States."

I also would like to call your attention to the fact that the bank accounts were transferred to the name of Uebersee in May or June of 1932.

The Court: Put it in here. The only point I had in mind was, I supposed from the beginning, when he was given the power of attorney by his father, he had to go through the transaction of investing them through various corporations. I had the impression he had done that before they were transferred to Uebersee.

Mr. Gallagher: That is what the record indicates.

The Court: That was my impression. It does not make any difference. If they went to Uebersee before the vesting, these funds were invested in various corporations, including property vested by the Alien Property Cus-
3186 todian—

Mr. Gallagher: And subsequently transferred to the corporation.

The Court: Just say subsequently, but before vesting by the Alien Property Custodian.

Mr. Gallagher: You can make the date, "And prior to 1936," because it took place in 1934 and 1935. Put it back as far as that.

The Court: Subsequently, prior to 1936.

Would that get it? They were vested in 1941.

Mr. Gallagher: 1942.

The Court: Subsequently, prior to 1936—

Mr. Gallagher: Were transferred to the—

The Court: —these funds—

Mr. Gallagher: These assets or these shares.

The Court: Assets.

Mr. Gallagher: Assets.

The Court: —assets were transferred to the plaintiff. I have written it in here. I will give it to you. That gets it all right.

Mr. Gallagher: Yes, that is satisfactory.

We have one other suggestion, and that is all.

The Court: You said something about 20. What about that?

Mr. Gallagher: 20 related with 21, and we were contemplating making it one, but I think 20 can stand the
3187 way you have changed 21 now.

Now, the only other suggestion, because we do think it gives an inference which I believe the Court would not want drawn, because the record does not reflect it, is in the finding 53.

With respect to the last sentence thereof, it now reads:

"Plaintiff corporation on occasions paid the expenses of trips made by Wilhelm von Opel."

The day that we were in court, you stated that Mr. Burling should draft it to read—this is page 3174—

"Plaintiff corporation on occasions paid expenses for a trip to South America."

I then added at that point:

"and paid for shooting stag in Hungary."

The Court then said:

"You can dictate that. I will mark that.

"'Plaintiff corporation on occasions paid expenses'; and then I will say, 'dictated.'"

We would like it to read:

"Plaintiff corporation on occasions paid expenses for a trip to South America and paid for the shooting of a stag in Hungary. However, said expenses were charged to the account of Fritz von Opel."

We would like that sentence added, and, in support of that request, I refer you to Plaintiff's 147 for April,
3188 1937, which, you might recollect, we pointed out at that time—that the amount is charged to him.

The Court: What was this in? You do not have to put in all the details. How did you have it? "Plaintiff corporation"—

Mr. Gallagher: "paid for the expense of a trip made by Wilhelm von Opel."

The Court: All you need is, "paid the expenses of a trip to South America."

And what is the other one?

Mr. Gallagher: "and for the shooting of a stag in Hungary."

The Court: You do not need that.

Mr. Gallagher: All right. "paid the expenses of a trip to South America," period.

The Court: And Hungary.

Mr. Gallagher: And Hungary, all right.

The Court: "paid for a trip to South America and another trip to Hungary."

Mr. Gallagher: "vacation trip to Hungary." I would like the word in there, so it does not show he was going on business.

Mr. Baum: If Your Honor please, they are now getting

outside of the record. Nobody said over there it was a vacation.

3189 Mr. Gallagher: It was stated in the record that it was for the shooting of a stag.

Mr. Baum: It may have been business and a vacation as well.

The Court: Well, put what the record shows.

Mr. Baum: Mr. Gallagher, in reference to this Hungary business, is referring to a statement in the books of payments of expenses to Count Edelsheim in Hungary. There are at least 80 items in the books of Uebersee that were made to Count Edelsheim. If one is to Count Edelsheim, I think we might legitimately infer that all of them are.

Mr. Gallagher: I do not want to argue a point that has not at all been raised by defendants at this time, but I will state, to refresh his recollection, that Mrs. von Opel testified that in April of 1937, which is the date on which this advance to Edelsheim is credited, Edelsheim and von Opel went to Germany, and she met him at that time at Hamburg.

Now, in connection with the Hungary trip, there were only 509 Swiss francs advanced to Wilhelm von Opel, which is about $150, and that was brought out by Mr. Burling himself, and not by us, in the earlier portions of this case.

Those are the only suggestions that we have now at this time with respect to findings of fact.

The Court: This will get it, I think:

"Plaintiff corporation paid the expenses"—

3190 This was after the agreement of 1931? Is that it?

Mr. Baum: That is right.

The Court: "after the agreement."

It is 1931, is it?

Mr. Gallagher: That is when we acquired it. I think it is surplusage. I do not think you need it in here.

The Court: You want to tie it in.

Mr. Gallagher: All right; "after 1931."

The Court: I do not care whether you say 1931. You are talking about a usufructuary agreement, whenever it came into effect. After the usufructuary agreement came into effect.

Mr. Gallagher: Excuse me. I think you might better leave that language out, Your Honor, because the shooting of the stag took place back in 1934, and in your own findings you find that the usufructuary agreement came into being some time prior to June—

The Court: "After the usufructuary agreement was made."

Mr. Gallagher: "After the usufructuary agreement was made, or after October 5, 1931."

The Court: Now, this will give it:

"After the usufructuary agreement was made on October 5, 1931, plaintiff corporation paid the expenses of a trip to South America and a trip to Hungary made by Wilhelm von Opel, said expenses being later charged
3191 on the books."—Is it later?

Mr. Gallagher: "said expenses"—

The Court: "said expenses being paid on the books of plaintiff corporation to Fritz von Opel."

Mr. Gallagher: Yes, sir; I think that is correct. That is correct, isn't it, Mr. Baum?

Mr. Baum: I believe so, Your Honor.

The Court: Yes; I think that is all right.

Mr. Gallagher: I realize that Your Honor stated, at the time that we had our discussion about the tentative findings of fact, that you were reluctant, if it was feasible, to make any changes in the opinion as drafted. However, I would, with Your Honor's indulgence, like to point out several changes, some six or seven, which we feel are completely unsupported by the findings of fact which now have been arrived at.

I point first to page 7 of your opinion, and I point to the third line of that second paragraph, where you have the words "joint title."

I think Mr. Baum will agree with the fact that that should be deleted, and Your Honor has found to the contrary on your own findings.

The Court: Where is that?

Mr. Gallagher: Page 7.

Mr. Baum: Now, where is it contrary to the findings?

3192 Mr. Gallagher: He finds legal title is in Fritz von Opel.

Mr. Baum: And Wilhelm von Opel had in rem rights, which in our law is equivalent to some title. I think "joint title" is a short form of describing it.

The Court: I thought I took that bodily out of the testimony of one of the witnesses.

Mr. Gallagher: No, Your Honor. None of the experts testified to that. Your findings are to the contrary on that and as to what the experts all testified. There is no joint title in the usufructuary and in the owner. One has the legal title and the other has the beneficial ownership. Joint possession is what they get, not joint title.

Mr. Baum: It would be the equivalent, Your Honor, of an equitable title, under our law.

The Court: I knew that, but the testimony on the stand was that it was not exactly like our law. I remember that. I did not pick that out of the air, did I?

Mr. Baum: I do not think so, Your Honor.

The Court: I am positive there was some testimony on that.

Mr. Boland: Your Honor, I handled the legal end of it, as you will recall, and I know definitely the whole theory that I worked with on German and Swiss law was absolutely the fact that there was only one title, and
3193 that was Fritz von Opel, under a gift agreement.

The Court: I have some recollection that Dr.

Kronstein said they did not have any such thing as we have here—equitable title.

Mr. Gallagher: There is no such thing as equitable interest in German law, as I understand. I am sure that I did not hear Miss Schoch testify that there was such a thing as point title under a usufruct. She gives no indication to me that she did.

The Court: I do not remember, frankly, where I got it. I thought I got that out of the testimony.

Mr. Baum: If I may make a suggestion, Your Honor, which Mr. Gallagher may agree to, if you want to strike out the words "joint title" and put in "beneficial enjoyment"—

The Court: All right.

Mr. Gallagher: All we are trying to do is conform to your findings, Your Honor, and, frankly, there have been a number of questions asked us by other lawyers as to the opinion. We are trying to clarify it.

The Court: There is a beneficial enjoyment, isn't there?

Mr. Gallagher: There is a beneficial interest in the usufructuary after it has been established, yes, sir.

The Court: That is what I say.

Mr. Gallagher: But that is not joint title under
3194 German law. Under German law, the whole title is in the legal owner.

The Court: All right. We will make it "beneficial interest."

Mr. Gallagher: How would that line read, then?

"Beneficial interest and the right to co-possession"—

The Court: Beneficial interest. If they have beneficial interest, they have a right. A beneficial interest is a right to demand that. That is a beneficial interest.

Mr. Gallagher: I think we might clarify it, Your Honor. You followed that in your finding 52, and you followed that

in your opinion, except that if you took this first joint title, which you are now calling beneficial interest, and you conformed it to finding (a) in 52, it would be in complete conformance with your finding of fact.

Mr. Baum: If Your Honor please, it just does not include (a). Mr. Gallagher is overlooking the first part of 52, which says, "An in rem right in property," which is not stated in the opinion.

The Court: I will tell you what I will do, if you want me to. I will substitute (a), (b), (c), (d), and (e) right in here.

Mr. Gallagher: Instead of that paragraph, then?

The Court: Oh, yes; that covers it.

3195 Mr. Gallagher: Yes, Your Honor.

The Court: Isn't that all right?

Mr. Baum: If you get also the first sentence of 52, which says they have an in rem right.

The Court: We have all of that.

Mr. Baum: That precedes (a).

Mr. Gallagher: All of 52 would be his opinion.

The Court: Just say, "Under German law," and then copy 52.

Mr. Gallagher: That is satisfactory, because that conforms, then, with your finding, Your Honor.

The Court: Now, I want to leave some of that in. Then I take up other rights created by the terms.

Mr. Gallagher: That is where you would strike, in other words, from the first start of the sentence down to "other rights," and you would continue on, as I see it.

The Court: That is all right. I will insert, "under German law, copy 52," and then—

Mr. Gallagher: Pick up at "other rights"?

The Court: And then the words "other rights." That stays in. All right.

Mr. Gallagher: Now, the next suggested strike is on

page 8, in paragraph 1, the third line thereof. You found that:

"Wilhelm and Marta von Opel and their daughter,
3196 Mrs. Elinor Sachs, were citizens of Germany and 'enemies', as defined by the Trading with the Enemy Act."

Your finding of fact is to the contrary. She is a resident of Switzerland and as such not an enemy within the definitions of the Trading with the Enemy Act. We feel that the sister should be stricken out of that paragraph to conform with your findings.

Mr. Baum: She may still be a citizen of Germany. She probably is.

Mr. Gallagher: Yes, but she is a resident of Switzerland.

Mr. Baum: I agree she is not an enemy under the Act; I agree.

Mr. Gallagher: I think she should be stricken from that line.

The Court: Where is that?

Mr. Gallagher: The second and third line of this paragraph here (indicating), "and their daughter, Mrs. Elinor Sachs." If you strike that much out, you would conform with your findings.

The Court: Where is that?

Mr Gallagher: Page 8.

Mr. Baum: If Your Honor please, I would suggest you do it another way. Why not do it before the words
3197 "and enemies" and why not insert "Wilhelm and Marta von Opel"?

Mr. Gallagher: I am striking their daughter, Mrs. Elinor Sachs.

Mr. Baum: That takes out the fact that she is a citizen of Germany.

The Court: We can put another paragraph in as to her.

"At all times involved in this suit, Wilhelm and Marta von Opel were citizens of German."

What do you want in there now?

Mr. Gallagher: "Were citizens of Germany."

The Court: What do you want to say about Elinor Sachs? She was a native of Germany living in Switzerland?

Mr. Baum: That is correct, Your Honor.

Mr. Gallagher: I would like you to add that the record is barren of any evidence as to what citizenship she does have.

Mr Baum: Nobody has proven to the contrary.

Mr. Gallagher: All right. Leave it that way.

The Court: "Their daughter, Mrs. Elinor Sachs"—Do you know how long it has been since she has been there?

Mr. Gallagher: Your Honor, I frankly do not think there is anything in the record to indicate. Even Mr. von Opel does not know how many years, but a long period of time. He does not communicate with her, it is my understanding.

The Court: "Native of Germany, presently re-
3198 siding in Switzerland."

All right.

Mr. Gallagher: Then, on page 9, sixth and seventh lines of that second paragraph, where you say, "It seems to me the usufructuary interests of Wilhelm and Marta von Opel and the contingent interests which they, their daughter or her issue, all alien enemies."

That should be changed.

The Court: You can just cut that out there.

Mr. Baum: You mean the words, "their daughter or her issue"?

Mr. Gallagher: If you strike out "their daughter or her issue," that would take care of it, and change the word "all" to "both," to read a little better.

The Court: Just say "alien enemies."

Mr. Gallagher: Strike the phrase, "their daughter or her issue."

The Court: "Alien enemies."

I do not know whether you need "alien enemies" in there at that point.

Mr. Gallagher: It does not hurt.

The Court: It seems to me it is really a little better to cut out the words "all alien enemies," and leave the others in.

Mr. Baum: It really is a matter of style, I believe, rather than anything else.

The Court: Although I think that styling is a little better.

Mr. Baum: I think the record is clear—

The Court: You do not have to call them what they are.

Mr. Gallagher: But the contingent interest of the daughter, or her issue, being a resident of Switzerland, does not taint.

The Court: But a native might. I have always had in mind that a native, even resident somewhere else—

Mr. Gallagher: But the Act, if I may say so, is controlled by residence, not nativity.

The Court: Not on your taint proposition. It will probably help your point a little bit, to be perfectly frank with you. You and I will probably disagree on the proposition, but I think if she were the only one who had any interest in the property—she and her brother Fritz were the only ones who had any interest in the property—it might very well be that you could not spell out anything out of that; but when you show that the mother and father and brother, who has had all these affiliations with his country, and the daughter, who has had that, and who may, for all we know, return back there, that gives a little flavor to the taint—not much, but a little. Do you see? All those circumstances may be taken into account. Very frankly, that might give you a point.

Mr. Gallagher: All right, Your Honor.

The Court: Of course, I may be wrong about that. It may be that if they get into another country, whether they take out citizenship or not, that stops all taint. I frankly cannot see that. I believe if Hitler went over into Switzerland and held property, it would still be enemy taint, unless he became a citizen. It is hard to divest yourself from all that. That is what I had in mind.

Mr. Gallagher: All right.

The Court: Start out with "alien enemies." That helps. I will strike that out.

Mr. Gallagher: The next suggestion is on page 10, starting the sixth line, the sixth, seventh, and eighth.

In light of your finding 10, in light of the evidence that he spent only about 10 per cent of his time in Germany, I think that sentence that he had his roots firmly planted in Germany—firmly planted in that country—is not founded on the record.

The Court: What I am talking about when I say "roots" is devotion, and I am trying to tie into the proposition that a man who is born in a country and has ancestors there from time immemorial, and has made fortunes there, and has been, as you say, a leading light in his country,
3201 and a representative in Olympics and world affairs, has the most powerful rootage in the world. I frankly could not understand the man's turning against his country under those conditions. There is not any opprobrium attached to him as far as I am concerned. As far as I am concerned, I rather dislike a man who would do otherwise. That is what I am talking about when I say "his roots."

Mr. Gallagher: All right, Your Honor.

The Court: It may be that down here at the bottom—

Mr. Gallagher: That is what I am going to indicate.

Where you have "continued allegiance to," that is not in conformity with finding 10, which is interest in the welfare of and sympathy for Germany. We had quite a dis-

cussion on the word "allegiance" at the time of our last hearing.

Then, the next sentence, "I find beyond doubt his fealty at all times has been to his native country of Germany."

In other words, as you found, it should be substituted for that sentence and we think that you could add that and start in, after the words "naturalized citizen of Liechtenstein," and carry on with finding 10.

The Court: "I find beyond doubt"—

Mr. Gallagher: The sentence just before that.

The Court: "I find beyond doubt that he had a
3202 continued interest in the welfare of and sympathy for Germany."

Mr. Gallagher: I think if you were to start with the sixth line from the bottom of that paragraph, "Statements made by Fritz von Opel after 1939"—

The Court: "Statements" is the reason for it, but this will fit into 10 if I say:

"In technical form Fritz von Opel is a citizen of a neutral country, but I find beyond doubt that he had a continued interest in the welfare of and sympathy for Germany."

Mr. Gallagher: That is all right, Your Honor. Then you can strike the last clause in the preceding sentence.

The Court: Wait just a minute. "Copy from finding 10," I will mark that.

"That in 1939, when he became a naturalized citizen of Liechtenstein"—

Mr. Gallagher: "That between the time in 1939"—

The Court: These are acts performed.

"Then in 1939, when he became a naturalized citizen of Liechtenstein, and in 1941, when war was declared by the United States, he had"—

Mr. Gallagher: I think you can just put this whole thing in there (indicating).

The Court: When I put these words "he had" in here, I simply mean it is to be copied in this way, but not
3203 when you rewrite this. You do not bother this page at all.

Mr. Gallagher: You are not changing the finding of fact at all?

The Court: I am not changing the finding of fact, but in order to make that read smoothly, I say, "Copy finding that in 1939 he had—"

Mr. Gallagher: Your Honor, I suggest we need the words "between the time" in there, not to segregate 1939 and 1941, because the statements were not made in 1941.

The Court: You want to say—

Mr. Gallagher: "Between the time."

The Court: "Between the time" does not have any significance. "Between 1939."

Do not rewrite it, but that is inserted as changed in pencil.

Mr. Gallagher: One other change in the line before, "indicate a continued allegiance." That should be changed "interest." As a matter of fact, you could strike that phrase there.

The Court: No.

Mr. Gallagher: Leave it like that and put the word "interest" there.

The Court: Oh, I see what you mean. "Statements made." We can copy the finding.

Mr. Gallagher: Copy the finding.

3204 The Court: Copy page 10.

Mr. Baum: Your Honor, that takes out your statement that he was in technical form a citizen of Liechenstein, and I think we are entitled to have that in, and I think it is important to you as well.

The Court: I guess that is right. The statements made are not so very important. We will let that stand as it is

here. That is a little better reasoning, but we will strike this whole paragraph out.

That is what you wanted, is it not?

Mr. Gallagher: You are going to let it read, "In technical form Fritz von Opel is a citizen of a neutral country, but I find beyond a doubt that"—

The Court: "That between 1939 and 1941"—

Mr. Gallagher: "When he became a naturalized citizen, he had a continued interest"?

The Court: Yes. This shows what is meant.

Mr. Gallagher: That clarifies it.

You have stricken that preceding sentence?

The Court: Yes, entirely.

Mr. Gallagher: Now, page 11 of the opinion, starting the end of the fifth line.

You have the line in there, "There is evidence tending to show."

Before that line, "Before the war, it is clear the 3205 output was shipped to Germany," is what you say.

I submit, Your Honor, that that is not correct. I refer Mr. Baum to record pages 2442 and 2443, wherein it was testified that a total of about 2,000 tons—slightly less than 2,000 tons—of bauxite was the output of the mines to von Opel's own knowledge; that of this amount 1,000 tons were sold in 1936 to the Hungarian Bauxite Trust; that subsequently the remaining portion—

The Court: What do you say?

Mr. Gallagher: That a part of the output—

Mr. Baum: Where is there evidence that only part of the output was shipped?

Mr. Gallagher: If you will read 2442 and 2443.

Mr. Baum: Is that Mr. von Opel's testimony?

Mr. Gallagher: That is Mr. von Opel's testimony.

Mr. Baum: Has he suddenly been endowed—

Mr. Gallagher: That is the only testimony.

Mr. Baum: Look at the defendant's exhibits which show where the output went—to the Giulini Brothers. The documents in evidence show a greater output than Mr. Gallagher is talking about, and that went to Giulini Brothers.

Mr. Gallagher: Less than a thousand tons, as of the time we are speaking of, in the '30s, before the war. There were 2,000 tons at that time. When you are talking about the war period, from the way the Judge has the
3206 language in here, you are apparently talking about two phases, before we go to war and before the others go to war, which would be the 1939 and the 1941 period.

The Court: I do not think it makes a terrible lot of difference, frankly. I did not intend to make any distinction between a claim that it was ever shipped and that it was not. I do not think there is any debate on that point.

Mr. Gallagher: Let us drop that and go to the next sentence:

"There is evidence tending to show also that Transdanubia shipped bauxite to Germany after declaration of war between Hungary and the United States."

There is no evidence now—

The Court: Before the war it was part of the output. Now, we have got that.

Mr. Gallagher: Now, the next sentence. After the United States and Hungary are at war—and there is no evidence in the record, as you will recollect from our last hearing, and from finding 31, that bauxite was shipped to Germany—after the declaration of war between Hungary and the United States—finding 31 sets forth what happens.

Mr. Baum: May I direct Your Honor's attention to Defendant's Exhibit 90-F, which says that 617 kilograms of bauxite were shipped to Giulini Brothers in December, 1941.

Mr. Gallagher: It has no date specification. As
3207 you will recollect, Your Honor, we showed that in October eighteen or nineteen hundred tons were

shipped; in November some eight or nine hundred tons were shipped; and by the time you get down to December you had approximately 600 tons shipped; with a falling off and from which we say the inference could be well drawn that there were no shipments after the 13th of December.

Mr. Baum: Mr. Gallagher is now testifying that all the shipping was in the first 12 days of December. There is no evidence of that.

Mr. Gallagher: The inference can be drawn, from the falling off of production and the fact that it is about one-third of the production in October, that that was the fact rather than the inference that it was taking place all during December. We have no evidence, anyhow, as to what happened.

The Court: You could say, "at and about the time of the declaration." That certainly was at and about.

Mr. Gallagher: That is all right: "At or about" rather than "after."

The Court: At or about December.

Mr. Gallagher: December 13 was when Hungary and the United States went to war.

The Court: "Shipped bauxite to Germany."

Maybe I had better put the dates, along in October, November, and December.

3208 Mr. Gallagher: October, November, and December, 1941. That will be in conformity with your finding, then.

The Court: "Shipped bauxite to Germany at or about" —just say "in December."

Mr. Baum: In your finding you said "during," Your Honor.

The Court: All right; "during December."

Mr. Gallagher: "During October, November, and December," was your finding.

The Court: "During December." As long as you do not say it is after.

* * * * * *

Mr. Gallagher: Yes, Your Honor.

The Court: "During December, 1941, which was at or about the time of the declaration of war between Hungary and the United States."

Mr. Baum: If Your Honor please, I do not know what Mr. Gallagher is attempting to do by whittling away at sentences of the opinion at a time.

The Court: What he did not want me to say was that I make a specific finding that it was after. I did not mean that. The way I recall it is that there was definite evidence that it went in there in December. Then I came to the conclusion lafer on, as you remember, that in so much as that condition existed and the parties who were on the witnes stand did not tell anything of any certain
3209 cessation of it, it is reasonable to assume that the corporation was carrying on that way.

Mr. Baum: Not only that, but in 1941 you find that they had a two-year contract to ship bauxite, until the end of 1942.

Mr. Gallagher: That is correct, but, at the same time, in our last hearing you stated to Mr. Burling, "Mr. Burling, it you have no other letters or orders showing any shipments after December, I can't find that there were any shipments."

That is the statement you made.

The Court: This opinion does not control, anyway. The Court of Appeals will read it, but they are going to have the facts here. I do not want to write anything in here that is inconsistent with anything here.

Mr. Baum: They are pulling out part of your finding and not the other part.

The Court: I did not mean to find that there was specific evidence here that the shipped it there afterwards.

Mr. Baum: It seems to me, Your Honor, it is not asking too great an inference if we prove shipments during December and a contract going for another year. Frankly, I do not see the need for burdening your opinion and restating finding 31.

The Court: The only thing is, if I am making a finding that is inconsistent with it, I should change that.

3210 I think I will let that go that way, "During December, which was at or about the time of the declaration of war."

You have that in there. This is not anything that is going to change this one way or the other.

Mr. Gallagher: The last suggested change on the opinion is the last sentence of that same paragraph, the last clause thereof, "which apparently supplied war materials to the enemies of the United States."

The Court: I think that is probably so. They say that is a conclusion, but if it is illogical, then the Court of Appeals can say so.

Mr. Gallagher: I won't press it, Your Honor.

The Court: Have you finished it?

Mr. Gallagher: Yes.

The Court: I am going to put at the bottom, "Judgment will be entered in favor of the defendant," instead of "dismissing plaintiff's suit."

All right.

Mr. Gallagher: In discussing the conclusions of law—and I will try to make this as brief as possible—I would like, with Your Honor's indulgence, to turn to conclusion 6 first. We have previously argued 5, and Your Honor has made up his mind on what constitutes enemy taint. We see no necessity for taking time to reargue number 5.

We would rather argue 6 or point out a suggested
3211 change, and then I would like to lump 2, 3, and 4 together for a brief suggestion.

In 6, in the light of what we were discussing on Transdanubia, the fourth line, "During World War II mined bauxite," is an affirmative statement and goes much farther than the findings.

Mr. Baum: World War includes from September, 1939.

Mr. Gallagher: But you have "for the benefit of an

enemy of the United States," and you do not become an enemy of the United States until the United States is at war.

Mr. Baum: All I can say is that this is a conclusion which the Judge is entitled to draw.

The Court: Is there any evidence that Hungary was doing that?

Mr. Baum: Hungary itself was an enemy.

The Court: All we have to do is say:

"Ownership of Transdanubia Bauxit, A.G., had mined bauxite for the benefit of Germany."

You do not have to say the time. Do not call them an enemy or anything else. It does not make any difference. You do not have to say the time.

Mr. Gallagher: There is nothing in the record to show that they mined bauxite for Germany after December, 1941.

The Court: I say, "which mined bauxite for the benefit of Germany." That is all I have got.

3212 Mr. Gallagher: At what time? Time becomes relevant.

The Court: The findings of fact are in here.

Mr. Gallagher: You are just going to make that broad statement?

The Court: That is all. This is not any additional finding of fact. As a matter of fact, you could say:

"The circumstances of the acquisition of Fritz von Opel's Liechtenstein citizenship and his attachment to and sympathy for Germany and plaintiff's ownership of Transdanubia."

That would do it, but it makes a little smoother reading to say:

"Which mined bauxite for the benefit of Germany."

Your time element is in there. I do not want to add anything to what I have said before.

Mr. Gallagher: In the next to the last line in that paragraph, where you say, "With the evidence of ownership," are you talking about the same ownership as you do in number 2, where you say it is indirectly? In one it is indirectly owned.

The Court: Cut out "evidence," if you want to.

Mr. Gallagher: In finding 2 you say the plaintiff is indirectly owned.

The Court: The enemy we are talking about here is Wilhelm. That is the one you are talking about here, 3213, is it not?

Mr. Gallagher: The corporation is the one that owns the securities. That is neutral.

The Court: We are talking about Wilhelm, the father. There is not any question about that, is there?

Mr. Baum: No, sir.

The Court: I am certainly not finding the plaintiff corporation is an enemy alien.

Mr. Boland: Your Honor, it seems to me that it is going to present a problem on appeal where you find that legal title—

The Court: Vested securities, with the evidence of ownership control by Wilhelm and Marta von Opel.

Mr. Boland: On appeal we have a problem where we have already found that Fritz von Opel is the title holder or that Uebersee is the title holder of the stock, of all the assets. Fritz von Opel has full title to all shares of Uebersee. We have a conclusion of law that he owned these assets. It seems to me we are in conflict if the Government is going to take any advantage of that conclusion.

The Court: I have labored the point out in the opinion that they controlled it. I have labored the point out that there is a certain type of ownership in them.

Mr. Boland: That is why Mr. Gallagher asked you

the question, Are you talking about any direct
3214 ownership, as you are in conclusion 2?

The Court: I suppose they are writing this, but what I am talking about is the ownership of Marta and Wilhelm and their control. That is what I am talking about. If you want me to put their names in there, that is all right.

Mr. Boland: It is just that the word "ownership" does not connote any legal title as distinguished from Fritz.

The Court: I do not mean that. The ownership I am talking about is that interest that they have that we have been talking about—usufructuary.

Mr. Boland: As long as it is clearly understood.

The Court: Do you want to say "usufructuary ownership"?

Mr. Boland: I think that would improve it.

The Court: That is all the evidence—

Mr. Gallagher: "Evidence of usufructuary ownership."

The Court: I am not trying to add to anything that I have found by these conclusions.

Mr. Boland: You see, while we will be the same people arguing on appeal, I understand Mr. Baum and the others might not be.

The Court: The Court of Appeals would be a pretty poor group of Judges if they think that my conclusions of law make additional findings of fact. I am not doing that. That would be stupid of an appelate court to say that—to say that Judge Laws is finding some owner-
3215 ship he has not talked about before. It would be stupid. But if you want me to say "usufructuary"—

Mr. Boland: That will clear up the problem we have.

Mr. Baum: We object to that. It is very vague to say "usufructuary ownership."

The Court: I am going to leave "control" as it is.

Mr. Baum: I hoped you would.

The Court: I will tell you what we will do:

"The aforesaid ownership and control by Marta and Wilhelm von Opel."

That will do it. That will certainly get it:

What were the words I used?

Mr. Boland: "Aforesaid ownership and control by Marta and Wilhelm Von Opel."

The Court: "Ownership and control as aforesaid of the vested securities by Wilhelm and Marta von Opel, alien enemies."

Does that finish it up?

Mr. Gallagher: No, Your Honor. I would like to discuss, somewhat briefly, 2, 3, and 4, and I will group them all together.

2, 3, and 4 set up the elements which you also talk about in 5, which constitute taint, and are predicated on the finding of fact by Your Honor that Frankenberg was the agent of Wilhelm von Opel, and in finding 40 you
3216 stated correctly that the record is bare of any evidence that after 1940 Frankenberg exercised any control over the plaintiff, but you said the record was bare of any termination of said agency and that, from the evidence, the fact that Frankenberg during the thirties, you found, had exercised control, you were going to find by continuendo, and did as a finding of fact, that he still continued to be the agent until the time of vesting, and it would be because of that agency, which would continue from the time of the outbreak of the war until the time of vesting, that alien enemies Wilhelm and Marta would indirectly own and control, you find, this plaintiff corporation, and thereby constitute taint and bar the recovery by the corporation of the stock.

To state the one line again more succinctly, you have found by continuendo, subsequent to 1940, that because an individual, Frankenberg, was an agent and because

there is no affirmative showing of any termination of such agency, as a fact said agency continued until the time of vesting.

I might submit to Your Honor that I honestly believe your finding of continuendo and the agency continuing until the time of vesting is completely contrary to the rulings of the Supreme Court of the United States, in the Insurance Company v. Davis, in 95 U.S., at page 425, and I would like to state this sentence out of the opinion first, Your Honor—

The Court: Excuse me just a moment. Let me tell
3217 you this. I think you are limited a little bit on this, which makes quite a difference. When you create a usufructuary interest in a party, that usufructuary interest, I would certainly assume, continued even though the agency which set it up ceased to be active. In other words, if he has a custodian agency which vests interest in the party, he could stop his activities immediately, and you would still have that interest. Suppose then he had activities of control up to a certain time. You could stop your control. You could stop exercising your control through your agent for the time being, but not lose your right of control.

If you find anything in there contrary to that, then you might swing me around.

Mr. Gallagher: I find in here one statement first which I would like to state to you.

The Court: Let me tell you what I am talking about. suppose I have got to get a title in me or I do get a title in me by an act of an agent. Title vests in me then, does it not? In other words, the key is turned over to him. He has sole possession. The interest is in me. From that time forward let us say the agent did nothing. I would still have that interest. He could be inactive. He could be fired. I would still have the usufructuary interest, which would remain until it is divested by an overt act.

Now, that is point number 1.

3218 However, this agent, also, we find, goes on to a period of activity of five or six years or eight or nine years, or whatever it was, and then it just happens that I have not heard of any activity in the last year or two or three years. That does not take away from the principal his usufructuary ownership, and it does not take away the evidence of his control. That is what I mean.

If I have an agent for me right now and he does not happen to do anything for me for the last six or eight months, that does not mean that I have given up my ownership or interest and control.

Mr. Gallagher: That is correct, under a normal agency, but this case goes further than that.

The Court: I will hear you.

Mr. Baum: May I interrupt for one moment, Your Honor?

The Court: Yes.

Mr. Baum: I am a little bit amazed by what Mr. Gallagher is starting to do. We came in here today to discuss ostensibly the conclusions of law. Mr. Gallagher is discussing the findings of fact. You told him to put them in writing. He now walks in with a stack of cases which I have never heard of.

The Court: I do not think we are going to have too much trouble about them.

Mr. Baum: I hope not.

3219 The Court: If he had some Supreme Court case that shows I am wrong, I will give him that opportunity.

Mr. Baum: I hope you will give me an opportunity to answer it.

The Court: I think so.

I want you to bear in mind the point I have before you argue something that is different, because I do not think the Supreme Court has held anything to the contrary on the point I have in mind. Go ahead.

Mr. Gallagher: Your Honor has stated—and I think it points up the first sentence in the opinion—that because you see no actual acts of agency, that does not mean the agency has terminated; it is still in existence. I agree with that statement. That is the law.

The Court: You also agree with me that if you are an agent of mine, in setting up a type of ownership, and then you stop being my agent, that ownership will continue?

Mr. Gallagher: Oh, no, not the usufructuary ownership; no, absolutely not.

The Court: You mean if this agent died, then the usufructuary would abate until you got a successor, until you got another one?

Mr. Gallagher: As a right in rem, you would have to re-establish it.

Mr. Baum: That is not the law.

3220 The Court: You would have to prove that law to me. Your right in rem exists, under every law that was ever known. Your title vests in the thing itself and never moves out of it by some agent's dying or taking a trip away from it by going into another country.

Mr. Gallagher: The whole purpose of this so-called usufructuary interest—and the Government's contention as to the evidences of control—is that if the agency is not in existence and the stock is back with the legal titleholder, there is no control element without coming back and re-establishing it as a right in rem.

The Court: You have to get an overt act to do that.

Mr. Gallagher: The record shows stock is being held at the Adler Bank to the account of Frima since October, 1941.

I would like to discuss just this one question, and then be able to answer any questions.

The Court: Yes.

Mr. Gallagher: As Your Honor stated, you presumed the agency continues. I will discuss the facts briefly. I would like to read first one sentence from this decision:

"In some recent cases in certain of the state courts of last resort, for whose decisions we always entertain the highest respect, a different view has been taken; but we are unable to agree therein: In our judgment, the unqualified assumption on which those decisions are based
3221 —namely, 'once an agent, always an agent'; or, in other words, that an agency continued to exist notwithstanding the occurrence of war between the countries in which the principal and the agent respectively reside—is not correct."

Now, this case has been cited subsequently in Williams against Paine, in 169 U.S., and more recently, in 1924, in 297 Fed., a Second Circuit Court of Appeals opinion, the Second Russian Insurance Company case v. Miller, wherein that court cited the Insurance Company against Davis as the controlling authority.

I will just apprise you briefly of the background. I will read it from the syllabus. It states it more succinctly than I could:

"A resident of Virginia, who had been before the war a local agent of a northern insurance company, refused to receive the renewal premium, due December 28, 1861, tendered him upon a policy of insurance upon the life of a resident of that state. His refusal was based upon the ground that he had received no renewal receipts from the company, without which he could not receive the premium, and that the money, if received, would be liable to confiscation by the Confederate Government. The evidence further failed to show that the company had consented to his continuing to act as such
3222 agent during the war, or that he did so continue.

Held, that, waiving the consideration of any question in regard to the validity of an insurance upon the life of an alien enemy, such tender of payment did not bind the company."

Now, the Supreme Court went on to say—and I would like to read a few lines, because it sets forth the line followed in Williams against Paine and the Second Russian Insurance Company case—

"We deem it proper to consider more particularly the question of agency, and the alleged right of tendering premiums to an agent, during the war.

"That war suspends all commercial intercourse between the citizens of two belligerent countries or states, except so far as may be allowed by the sovereign authority, has been so often ascerted and explained in this court within the last 15 years, that any further discussion of that proposition would be out of place. As a consequence of this fundamental proposition, it must follow that no active business can be maintained, either personally or by correspondence, or through an agent, by the citizens of one belligerant with the citizens of the other. The only exception to the rule recognized in the books, if we lay out of view contracts for ransom and other matters of
3223 absolute necessity, is that of allowing the payment of debts to an agent of an alien enemy where such agent resides in the same state with the debtor. But this indulgence is subject to restrictions. In the first place, it must not be done with the view of transmitting the funds to the principal during the continuance of the war; though, if so transmitted without the debtor's connivance, he will not be responsible for it. In the next place, in order to the subsistence of the agency during the war, it must have the assent of the parties thereto—the principal and the agent. As war suspends all intercourse between them, preventing any instructions, supervision, or knowledge of what takes place, on the one part, and any report or application for advice on the other, this relation necessarily ceases on the breaking out of hostilities, even

for the limited purpose beforementioned, unless continued by the mutual assent of the parties. It is not compulsory, nor can it be made so, on either side, to subserve the ends of third parties. If the agent continues to act as such, and is so acting, is subsequently ratified by the principal, or if the principal's assent is evinced by any other circumstances, then third parties may safely pay money, for the use
3224 of the principal, into the agent's hands; but not otherwise. It is not enough that there was an agency prior to the war. It would be contrary to reason that a man, without his consent, should continue to be bound by the acts of one whose relations to him have undergone such a fundamental alteration as that produced by a war between the two countries to which they respectively belong; with whom he can have no correspondence; to whom he can communicate no instructions; and over whom he can exercise no control. It would be equally unreasonable that the agent should be compelled to continue in the service of one whom the law of nations declares to be his public enemy."

Now, we have, in addition to that finding continuendo an agency in Frankenberg, a violation of the naturalization laws, as evident from the loyalty oath required to be taken by him. We have a definite violation of Section 2 of the Trading with the Enemy Act, as to which the statute had not run prior to the amendments of the vested properties, and which were amended on the basis of the Gold case, setting up the agency in Frankenberg, because you will find, under your definitions, "To trade"—and this is now applicable in this case, because to trade, as we pointed out earlier in the trial, contrary to Mr. Burling, refers to Section 3—

3225 The Court: Did he testify in the Gold case?

Mr. Gallagher: No, sir; no affidavit from him in the Gold case.

In section 3 it is made unlawful and punishable by penitentiary sentence for any person in the United States to trade, and so forth.

When we get to the definition of "to trade," we find, under Section (c), "To enter into, to carry on, to complete, or perform any contract agreement or obligation."

The Court: I have not made any specific finding of agency.

Mr. Gallagher: If he is not the agent from 1941, there is nobody to exercise control over this corporation after the outbreak of war.

The Court: You mean the effect of that would be the outbreak of war would end—

Mr. Gallagher: Frankenberg's agency.

The Court: Wait a minute. Your argument was that the minute war broke out, and thereby ended Frankenberg's agency, the war in and of itself between the United States and Germany would end a man's usufructuary interest.

Mr. Gallagher: No. Here is what I say. I say the presumption that should be drawn by the outbreak of the war—in other words, revetsing the presumption of continuendo—

The Court: I do not care whether he was an agent
3226 after the war or not. My point is the usufructuary interest had been set up and it existed as of the time of the war and that the breaking out of the war between the two sovereigns would not kill this man's rights, according to the laws of Germany, which we now respect.

Mr. Gallagher: Your Honor, your findings are all set, and I am not discussing the findings. I am discussing the conclusions—that Frankenberg was exercising the right after the outbreak of war.

The Court: Did I say that?

Mr. Gallagher: Yes, back in the findings. That is not in the conclusions, but you have got the parents exercising the control in findings 2, 3, 4, and 5.

The Court: I still think so.

Mr. Gallagher: But they do it through Frankenberg, or do you say no?

The Court: I am going to let the record stay as it is, as far as the other control is concerned. I am not striking the other findings out. You can argue that to the Court of Appeals, but you will have argue this with me: I simply cannot see how the breaking out of war between Germany and the United States, which is an act of two sovereigns, could kill a usufructuary right on the part of Wilhelm and Marta von Opel.

Mr. Gallagher: Let us assume that the agency is
3227 terminated at the moment at the outbreak of war, because to hold otherwise would put Frankenberg in complete violation of Section 2. So the agency is terminated, because there is nothing to show that he has continued to act. Is that correct?

The Court: We will assume that for the argument.

Mr. Gallagher: We are back to the mother and father, and they had a usufructuary right set up by putting the shares in Frankenberg. The shares, in 1941 and subsequent thereto, are in the name of Frima. Number one. They are not in the name of Frankenberg. They are not held in Frankenberg. They are in the name of Frima. True, they are in the Adler Bank.

The Court: That is where you and I differ. This custody that was gone through for this tax appeal, in my judgment, did not break down the ownership.

Mr. Gallagher: Now, when the shares are back, Frankenberg is out. They were the people, you found, through whom he exercised control.

The Court: You get the shares out, whereas I do not.

Mr. Gallagher: They came back to the Swiss Bank.

The Court: It is all custody rather than possession.

Mr. Gallagher: We are looking at this thing from the question of control—

The Court: The way you are arguing, you are arguing a motion for rehearing.

3228 Mr. Gallagher: I am bringing to Your Honor's attention something that came to our attention the last few days.

The Court: As Mr. Baum said, this is really a motion for rehearing rather than findings, because, frankly, if I took that view, I would have to reverse my finding.

Mr. Gallagher: We wanted to raise this before. We wanted to give you an opportunity—

The Court: I appreciate that. I do not see how I can do it, on the findings of fact proposition. You see, I differed with you on your view about this passing out of the usufruct, and unless you can indicate to me that the German law is entirely different from the American law—the law in effect here—it will have to stay that way. Once you set up, through a valid agent, the usufructuary interest, even though the agent let it go over into Frima for some tax purpose, it did not indicate any relinquishment of the title or right of control, and therefore you are not having it pass out of the principal, so to speak.

Mr. Gallagher: A usufructuary interest.

The Court: That is right. It is not passing out, so it does not have to come back. That is where you and I differ. It does not pass out.

Mr. Gallagher: Here is where I would like you to bear with me. However, you have found, in your opinion, that it was through Frankenberg that the father was

3229 exercising control over the plaintiff, up to the time of the—

The Court: You are talking about a different thing. Control is one thing—

Mr. Gallagher: That is what I am basically directing my attention at—control.

The Court: There is nothing in here—

Mr. Gallagher: There is no possession in the father. That is with the bank. Your Honor, if I might submit that, just referring back to your findings—

The Court: What I find is that the possession of Frankenberg becomes the possession of the father and merges into that and it never goes out. That is what I am really in effect finding. Control is another point. That is a different point. What I am talking about control, it is a different kind of control. The control I am talking about is when he was bossing what happened over here through Frankenberg. That is a different kind of control. That might have ended with the war. You might be right on that, but I do not think you are right on the other proposition, on the proposition that the usufructuary interest comes to an end.

Suppose my wife or my brother or my friend has an interest in certain stock or securities and he lends it to me or lets me have custody of it for some transaction. He does not divest himself of ownership in it. You do
3230 not have to get it back to him then.

Mr. Gallagher: But on the important point of control, in findings 2, 3, and 4, you find that they had possession of the shares and you find that on a custodial basis, not actually. It is a custodial basis, and you find they exercised direction and control over such shares and the management, investment, use, and disposition of the property owned by plaintiff corporation, and the only pertinent time is December 7, 1941, until the time of vesting; and to support that sort of conclusion of law, the findings of fact, in your opinion, reflect that the person who was doing that exercising was Frankenberg, down to the time of vesting.

The Court: There are two forms of control that I am talking about. There are two forms. One of them exists by virtue of this usufructuary interest. That is number one. Now, that did not end, in my judgment.

I might grant that you are right on this other kind of control, by virtue of what the Supreme Court said, namely, that Frankenberg was over here bossing and telling them what to do. As you say, that might violate the Trading with the Enemy Act. I do not know whether it does or not. Let us say it does, though. I might say that if it violated the Trading with the Enemy Act—or, as the Supreme Court says, an agency—the boss over here—between a person not a resident of Germany and one who is a
3231 resident and a citizen of Germany would be a rational deduction—that is true. I mean to say where an agency of another one over here, an American with an agency in Germany, would end at the outbreak of war, that is not going to break down his control by virtue of this usufructuary interest.

You may be right, and I do not know whether you are right. You may be right, but I am inclined to think that, so far as bossing the company is concerned, I am not entitled to presume that after the outbreak of war; but on that usufructuary interest, I simply do not think that the declaration of war by the United States with Germany would break down Wilhelm's—

Mr. Gallagher: That is a different point that I won't labor with you.

The Court: That is right, but that very point would constitute the enemy taint and would constitute the right in rem that I am talking about in this conclusion of law. Do you see what I mean?

Mr. Gallagher: I know, and I am not trying to dissuade you, and I know you have made up your mind on that.

The Court: That is the heart of my decision, and I cannot believe it is wrong.

You see, one reason why I do not follow you on your Frima proposition as to title going out of him is that it is just as much to the interest of Wilhelm as to Fritz
3232 to go through that tax saving transaction through Frima. It is just as much to his interest, it saves

money for everybody, and he says, "Sure, I will let that colorful transaction of these shares and my interest in them—I will let that semblance of dealing with them—pass over to Frima," but that is not what we call a divesting of interest, any more than it was a divesting of interest by Fritz. He held his own interest in that.

Mr. Gallagher: That is where earlier we wanted to reopen to take testimony from Dr. Hoffacker and Dr. Kronstein. You found that Wilhelm and Marta, either through Frankenberg or otherwise, because they had a usufructuary, which you say is not a loss of right in rem, exercised control. There is no evidence of that in the record.

The Court: You have two types of control. That is what you want to get in mind. I think the Government ought to have it in mind, too. There are two types of control we are talking about. One control is a control which, I have found, according to the testimony of experts, existed simply by virtue of owning this usufructuary interest. That is one type.

Then there is another type. This may clear it up in your mind. There is another type of control that I had in mind when I said that I felt that Frankenberg had bossed the affairs over here and that Wilhelm had been consulted from time to time. I cannot think of anything more logical than one of those pieces of testimony that Mr. Houghland gave. There was one move there he was very anxious to make, and it was very obvious that he wanted to do it, and there was testimony of his having obtained the agreement of Fritz to do it, which was vetoed after it had been taken abroad, which was very indicative to me, from the meetings that they had, that it was that type of control.

3233

I am talking there about a bossing, but the other control that I talk about is simply that of the usufructuary, and there is not anything in here that is inconsistent with that.

Mr. Gallagher: Which was actually exercised, as you find. There is nothing in there to find the exercise of that control unless you find Frankenberg exercising it for them.

The Court: You and I differ on one proposition, and, in my judgment, the usufructuary interest came into being by the turning over of the key and the putting up of that deposit that vested in the interest of Wilhelm. I think you can strike out your agent from that time over, so far as existence of that right is concerned. You do not.

Mr. Gallagher: I say, let's strike them out.

The Court: No, but I mean that could have happened and the right still exist. In other words, if we
3234 strike down your agency, once your right has vested and set up anyway—

Mr. Gallagher: You are pointing up the proposition Mr. Boland has discussed before—that that beneficial interest does not constitute taint.

The Court: I am not giving you taint there. It is one step in taint. That is a question, in my judgment, on ownership. I guess it is taint, too. I guess you are right.

I tell you, as long as I have not anything in here that is contrary to something that I found, I do not want to change it. I recognize your point. It is a right interesting point, and if the defendant were depending in this case only on the control by way of bossing, as I have put it for want of a better term or a more illustrative term—if they were depending on that alone—it would be a very strong case. I will be perfectly frank with you on it. In other words, it is something I can see the logic of and I would have to follow, and that is very reasonable.

Frankenberg is an American citizen now, isn't he?

Mr. Baum: Now he is, but he was not at the outbreak of war. He was a citizen of Haiti, which was not at war with Germany.

Mr. Gallagher: But he was a resident here and applied for citizenship in 1941.

3235 The Court: According to that decision—

Mr. Baum: The decision would therefore not apply, because it is between citizens of belligerent countries.

Mr. Gallagher: He is a resident, however.

The Court: It is perfectly obvious, though, Mr. Baum, that if you have an agency to boss affairs here in the United States—an agency of a foreign country—I am not talking about ownership now, because I agree with you on that—but if he had an agency over here to run these organizations—just like the insurance company—and war is declared with his principal—the country in which the principal exists—I think that is directly in point there. That would terminate that agency, in the absence of some testimony to the contrary.

Mr. Baum: I would respectfully say to you, Your Honor, that that is no longer the law. We have won at least six cases completely contrary to that case.

The Court: In the Supreme Court?

Mr. Baum: No, not in the Supreme Court.

The Court: That was a Supreme Court decision.

Mr. Baum: I realize that. It is a Civil War case. Things have changed a great deal.

The Court: I know that, but that is a reasonable proposition.

Mr. Baum: If Your Honor please, I submit it is
3236 not, for this reason. If a German had authorized an agent in the United States to boss his property, as you put it, to say that the Alien Property Custodian must prove that, after we were at war with Germany, and after we could not even communicate with Germany we must prove that the German, nevertheless, communicated with the agent and gave him new authority, would mean we would never vest a piece of property.

Mr. Gallagher: They can always vest. It is a question of keeping. We have argued that before.

Mr. Baum: It is very interesting.

The Court: I am not going to decide that, but I think that is a right interesting point.

Mr. Gallagher: I did not want to take it up later and perhaps find it is correct.

The Court: I commend you for that. I wish all the lawyers were as fair. Sometimes I get in the Court of Appeals and the point decided is one I have never heard of. I have had two happen in the last two years. I never heard about the point at all, and it was made in the Court of Appeals. I sent for the briefs on purpose. They had not argued it at all. There was not any mention made of it. But I do appreciate that.

I do not think there is anything in the wording there, Mr. Gallagher, that needs to be changed. In other words,

I do not think there is anything in here that is out of

3237 keeping with that opinion.

Mr. Gallagher: What is that, Your Honor?

The Court: I do not think there is anything in the conclusion of law that I have made that is out of keeping with that opinion of yours that you have just read.

Mr. Gallagher: Well, the only point that I can see—

The Court: For the reason that the usufruct, in my judgment, did exist, even though we concede that the outbreak of war stopped his agency.

Mr. Gallagher: Let us say it did, but that does not mean you exercise control because it exists.

The Court: It means you had control.

Mr. Gallagher: You say they exercised. It is a different thing to say you have control of a corporation than it is to say that you exercise control of a corporation. It seems to me you need more of an affirmative showing.

The Court: No. This says, "Subsequent to said gift agreement and pursuant to said usufruct"—

Mr. Gallagher: You say, "Wilhelm and Marta von Opel had possession of all of the shares of plaintiff and exercised direction and control," and presumably down to the time of vesting.

The Court: I did not say "down to the time of vesting."

Mr. Gallagher: I would presume that you meant down to the time of vesting unless you put down there some
3238 date in conclusion 3.

The Court: This is a conclusion of law. I do not want to make it a finding of fact. In other words, I find that they exercised control. Well, that really is a finding of fact, isn't it?

"Subsequent to said gift agreement and pursuant to said usufruct"—it is really co-possession.

Mr. Gallagher: Yes, Your Honor.

Mr. Baum: No, Your Honor.

The Court: What is that?

Mr. Baum: That is something Mr. Gallagher has been pounding away at for weeks. They did not have co-possession. Fritz von Opel testified that he gave Frankenberg the only key. You do not get into a safe deposit box without a key.

Mr. Gallagher: Who has co-possession now? If you are going to talk about that one key, the shares are in the name of Frima.

The Court: I was thinking about the question of law, though.

Mr. Gallagher: What is that, Your Honor?

The Court: I was thinking about the question of law.

Mr. Baum: I do not understand, Your Honor.

The Court: I am thinking about it as a question of law. This is not a finding of fact. I do not know whether you need 4.

3239 Mr. Baum: 5 does not make any sense without 4, Your Honor.

The Court: You do not need to say. You do not need much in there.

Mr. Baum: The reason I think we need 4, Your Honor, is because it is a two-step argument. If you say the corporation is enemy tainted and the taint it shown through Wilhelm and Marta, that is part of the conclusion.

The Court: Wait just a minute, You have this as strong as you need it, in my judgment. You cover that in your next one, don't you? You have got that.

Let us take out 4 and make it "the possession and control of the outstanding shares." You do not need any finding on that. You are not limiting that a bit.

The possession is what you talk about in your preamble in your findings of fact, and then you have got that supplemented. I do not know whether you have everything in there that I have found. I do not think it makes a lot of difference, because they are all in there. The nativity of his sister might have something to do with it. Really, the conclusion is that as of the time of vesting of the shares of plaintiff corporation, they were enemy tainted.

That is all you need, and the less you say about it, the better off you are about it on your conclusions of law, because you have my opinion telling my views about it.

3240 I would make that very simple.

Your usufruct is all right. 1, 2, and 3, are all right. But I think I would cut out 4, 5, and 6, and just substitute a finding that as of the time of vesting of the securities held by plaintiff corporation, they were enemy tainted within the meaning of so and so.

Mr. Baum: I think that would make it too general, Your Honor.

The Court: You are a whole lot better off. If you make it specific, then I have got to write everything in there. I mean, I have got to write an argument in there. You do not want to write an argument in there. The more general it is, the better it is.

Mr. Laufer is nodding his head up and down; he agrees with me.

Mr. Baum: I do not think he does.

The Court: I think he does.

The principal thing you want in the conclusion of law is that the decision is in favor of the defendant. That is the principal one.

Mr. Baum: Yes, but also, as you recall the final argument, you said it is up to me, paraphrasing the language, to decide what the Supreme Court meant by enemy taint. We think conclusion 4 shows what is meant.

The Court: That is a summation of it, that is
3241 true, but it is really in my opinion. I would rather you copy the language of my opinion, because you have left out the sister's reversionary interest, which is an item.

Mr. Baum: Those are items which are set out in your findings of fact.

The Court: That is right, but you are cutting it out of here. I think you are much better off if you make it general. You are tying me down, and I do not want to be tied down on that proposition, either rightly or wrongly. I might as well meet that squarely. I think I am perfectly right about it. The Court of Appeals may think differently, but I think I am perfectly right about it.

You have in your preamble—you have in your findings of fact—Fritz' birth, Fritz' activities and sports. I think you have that in there. You have got his visits. You have got his sister's nativity. You have the mother and father having lived there all their lives and being enemies, and von Opel's name was famous in Germany. You have all of that.

In addition to that, you have my opinion summarizing all that out, and all you have to say in your conclusions of law is that the circumstances, the ownership of the vested securities and the interest of the various parties involved, constitute enemy taint within the meaning of so and so.

Now, you have got the benefit of my views and
3242 argument by my opinion. You have all the salient facts in there. That is my better than summarizing my facts now. Do you see what I mean?

Mr. Baum: Would you mind repeating what you just said?

The Court: You think that over. I am not terribly wedded to the idea, but I have had a lot of experience with conclusions of law, and you do not need a whole lot on this. The thing you need is your findings of fact, and my arguments by way of opinion will be pointed up a whole lot by your arguments and brief.

What I do not want to do, and what I do not like to do here, is to limit, as I think you have done here, my conclusions to certain propositions that are not in there.

If you gentlemen are right in this, you win your case; but if you happen to be wrong and I happen to be right, by considering these others you might have a little bit of an argument there: "Judge Laws cut down his opinion."

Mr. Baum: I see your point.

The Court: You will never go wrong in generalities on findings of law.

Mr. Baum: I hope not.

The Court: The time you go right is in your findings of fact.

We will leave 1, 2, and 3 as they are and then substitute for 4, 5, and 6 language substantially to this effect.

3243 You can write all of this up, in case I have overlooked something.

Just put it that the circumstances of the ownership and control of the securities vested by the Alien Property Custodian constitute enemy taint, which the Supreme Court of the United States has decided bars recovery under the Trading with the Enemy Act. They did not define it, but they said it bars recovery. That ownership will get in everything that I have said, in my opinion. That will get the reversionary interest, it will get Fritz' mother's and father's—

Mr. Baum: It does not get in the bauxite.

The Court: Ownership and control? That is right. Maybe I should not strike out 6.

Mr. Baum: I think possibly the remedy is to write this in place of 5 and leave 6 in there.

The Court: And leave 6 in there, starting out with, "Plaintiff's ownership of Transdanubia."

Make this number 5, then:

"Plaintiff's ownership of Transdanubia Bauxit, A. G., which mined bauxite for the benefit of Germany, is further evidence of enemy taint within the meaning of Section 2 of the Trading with the Enemy Act, and taken in conjunction with the ownership and control defined in the preceding paragraph, bars recovery of the vested secu-
3244 rities."

That will get rid of a lot of what you want.

Mr. Baum: That also eliminates the circumstances about Fritz' citizenship.

The Court: Oh, yes. We can leave 6, starting that way.

Mr. Baum: That is what I would suggest.

The Court: We can leave 6 about like it was.

Let us put that in the beginning. Put right ahead of what I dictated:

"The circumstances of the acquisition of Fritz von Opel's Liechtenstein citizenship and his attachment to and sympathy for Germany," and then go ahead with what I dictated.

I think I can get that now.

What about your orders? Have you drawn that?

Mr. Baum: I had submitted that to Your Honor early in March.

The Court: Have you seen that?

Mr. Gallagher: It was a long time ago. I do not recollect it.

The Court: You can rewrite this thing. Give it to Mr. Gallagher. I would like my law clerk to correct this opinion.

How should I handle that opinion proposition?
3245 Should I substitute it?

Mr. Gallagher: I think you should substitute this for the other.

The Court: Is that proper?

Mr. Baum: I think so.

The Court: Otherwise I would have to say, "The following is hereby substituted," and rewrite the whole thing.

Would you rather have me write it or would you do it?

Mr. Baum: I can undertake it.

The Court: I think I can do it.

Mr. Baum: It is just a mechanical difficulty. Some of the corrections on the findings—

The Court: All I need to do on this finding is this. Here is the judgment, now. It is not a dismissal.

Mr. Baum: That was on the basis of your opinion.

The Court: You leave this with me, then.

You pick up Monday morning, in my office, these notes, and by then I will have taken out of there the corrections I want made in the opinion. Then you rewrite the findings of fact the way I have marked them. Give Mr. Gallagher a copy, and then rewrite the judgment.

You give me a copy and each side a copy of what I dictated there, and then we can try to get it out next week, about Wednesday.

(At 12 noon the hearing was concluded.)

* * * * *

3248 PROCEEDINGS

The Deputy Clerk: Uebersee Finanz vs. Tom C. Clark.

Mr. Gallagher: May it please the Court, with respect to the plaintiff's motion for new trial, it is not my intention to labor Your Honor. Our motion sets forth the basis for

the motion probably much more succinctly than I could state it orally.

As we have pointed out in the motion, the existence of Miss Firnhammer did not come to our attention as counsel until after this trial had concluded. The existence of her testimony did not come to the attention of either counsel or Mr. or Mrs. von Opel, Mr. von Opel being, as the Court well recollects, majority shareholder in the plaintiff corporation.

It seems to counsel for the plaintiff that Miss Firnhammer's testimony has considerable significance when read in the light of Your Honor's opinion and finding, which is to the effect that while Mr. Wilhelm von Opel discussed the question of a waiver with Dr. Daniel Gros in the year 1935 or thereabouts, he never did waive his Niessbrauch by any statement or act.

The statements of Mr. Wilhelm von Opel, Miss Firnhammer states, were made to her during the years 1935, 1936, and particularly in the year 1937, which is after plaintiff's exhibits 96 through 101 had been written and addressed to Director Wilhelm of the Reichbank; and Your
3249 Honor will recollect the testimony of Director Wilhelm, which is in the record in this case, indicated that he advised Gros that the Reichbank felt that it could take no steps to endeavor to have any of the income from the alleged niessbrauch returned to the Reich.

Miss Firnhammer's testimony, I concede, is in a sense cumulative, and I am well aware of the rule that testimony which is merely cumulative or corroborative is insufficient for predicating a motion for a new trial. In this case, however, proceeding in equity, it seems to counsel for the plaintiff that her testimony—when added to the testimony of Dr. Gros; Fritz von Opel, the father, wherein he stated that he never wanted to have anything to do with the niessbrauch, that the only purpose was for protection in case of need; the testimony of Director Wilhelm that Dr. Gros did

come to see him on repeated occasions over a period of 2-odd years; the exhibits which have been introduced; the letters corroborating the fact that the matter was taken up with the Reichbank; and the fact that we are dealing here with the property of a neutral corporation; and, on a strictly one-premise question of law basically, namely, that of enemy taint, have determined that this plaintiff corporation is not entitled to get its property back and thereby have confiscated it in effect—it would appear that this testimony as to the waiver should move this Court, acting in
3250 equity, to grant plaintiff's motion.

Your Honor will also recollect, as is set forth in the plaintiff's memorandum in support of the motion, that we set forth there testimony given by Mr. Fritz von Opel in the year 1946, prior to the time that Wilhelm von Opel's testimony was taken in Wiesbaden, in which Mr. von Opel stated that his father had renounced all claims against him and the niessbrauch, and the defendant was well aware of this fact, having taken this testimony and its being taken at their request before they proceeded to Wiesbaden to query Wilhelm and Marta and the others.

During the course of the proceedings in Wiesbaden, as is evident from the affidavits of Dr. Henry Kronstein and Mr. Richard Connor, Mr. Wilhelm von Opel was present during the taking of the testimony. He was present during the taking of the testimony of Dr. Daniel Gros, the author of the letters to the Reichbank. If, as we point out in our motion and memorandum in support thereof, the defendant thought there was anything fabricated, specious, false, or otherwise with respect to that testimony, they had ample opportunity to have questioned Mr. Wilhelm von Opel at that time.

Plaintiff's counsel, Mr. Richard Connor, did query Gros about these letters in detail. His deposition testimony was not introduced, in view of the fact that he was present here

in the court as a witness, and Your Honor will recol-
3251 lect he testified with respect to each of those exhibits. The father had told him he wanted nothing to do with it, and Gros' job was to take it up with the Reichbank to see that it was washed out and that the father would be under no further peril or action on the part of the Nazi government.

So for all those reasons, and particularly since the defendant has repeatedly endeavored to make moment of the fact that neither Wilhelm nor Marta was specifically asked about the waiver, we feel that equity demands that Miss Firnhammer be heard from; and further, as we pray in our motion, that Your Honor, if he were to hear from Miss Firnhammer, permit us to bring Mrs. Marta von Opel here so that she herself could now testify with respect to the waiver.

That is all, Your Honor.

Mr. Baum: If Your Honor please, I will try to be equally brief, but I think certain facts must be pointed out which Mr. Gallagher has not made clear.

In the first place, Mr. Gallagher seems to premise his presentation to Your Honor on a request for an exercise of discretion. It is the defendant's view that there is little room left for Your Honor's discretion in this matter, for several reasons. In the first place, we strongly contend that this testimony of Miss Firnhammer is inadmissible and would not be ground for a motion for a new trial in any event. She says that she heard Wilhelm von Opel
3252 say that he no longer had any claims against his son. Those are clearly hearsay declarations.

The plaintiff says that those declarations are against interest, but I call Your Honor's attention to Miss Firnhammer's affidavit, in which she herself says, quoting Wilhelm von Opel, or at least paraphrasing him, that the best way out was to explain to the authorities what his intentions had been from the beginning, namely, that he had

only wanted protection in case of need and that he did not want to have any claims against his son because they would involve him in the strict regulations with regard to foreign currency.

In that context those are only self-serving declarations. Mr. Wilhelm von Opel, as this very affidavit shows, was being bothered by the German authorities to bring in foreign exchange arising out of this usufruct, so for him the best way was to say he had no usufruct.

In fact, this affidavit states above: "He was afraid that the Nazi might use what we called the Niessbrauch provision of the gift agreement to jump on him anew year after year."

Therefore, these statements were nothing more than efforts by Wilhelm von Opel to get himself out of trouble with the Government, and those are not declarations against interest. When the German authorities were after him and he was trying to get out of trouble, he was not mak-
3238 ing declarations against his own interest.

But beyond that, I think Mr. Gallagher adverted to a very important point on this motion. As we have set forth in our memoranda, the courts have stated that there are five requirements which must be met in order for the court to grant a motion for a new trial as here filed. These are that the evidence must be newly discovered evidence; that due diligence to discover it must have been shown; that the evidence must not have been cumulative or corroborative; that the evidence be material; and that there be a probability that it would lead to a different result.

We say that none of these requirements has been met here, even assuming that these declarations would be admissible.

In the first place, we say it is not newly discovered, for this very simple reason. Attached to the Defendant's answering memorandum is a statement from Miss Firnhammer which was obtained from an agent of the Fed-

eral Bureau of Investigation, in which she states that Fritz von Opel came to her right after Your Honor's opinion was handed down and asked her what she knew about this case, and she further states, in the very same statement, that, from the manner in which Fritz von Opel questioned her, she knew that he knew that she was aware of the nature of the case, but did not know the exact extent of her knowledge.

3254 I submit that that shows at least knowledge on the part of Fritz von Opel, who can well be deemed the representative of the plaintiff, that there was a witness who had knowledge of material facts in this action, but who waited until after they had lost the case, as a result of Your Honor's opinion, and then came along and looked for additional witnesses. That is not the way to establish a basis for a motion for newly discovered evidence.

I would like to point out to Your Honor in that connection that that very statement of Miss Firnhammer which was obtained by the defendant is contrary to the allegations of the moving papers themselves. The moving papers contained a double hearsay statement by plaintiff's counsel that Fritz von Opel told them that Margot von Opel had spoken to Miss Firnhammer, whereas the true story, from Miss Firnhammer's mouth, seems to be that Fritz von Opel came running after her as soon as Your Honor's opinion had been filed and read.

Furthermore, Miss Firnhammer, in the affidavit which plaintiffs have submitted, says that she took the place of a daughter, with respect to Mr. and Mrs. von Opel, after their own daughter had run away to Switzerland.

It seems to me, and I believe it should to the Court, that it is somewhat incredulous to believe that no one thought of asking a person who was on such intimate terms with Wilhelm von Opel and Marta von Opel, whether

3255 she knew anything about this case before they came to trial; and I think that the failure to ask her, if

there was a failure, was certainly a showing of lack of due diligence in preparation for the case for trial; and that seems to be what is inherent in this motion.

Furthermore, Mr. Gallagher admits that the testimony is cumulative or corroborative. I would like to point out just how strong that is to Your Honor, by virtue of the two cases which we have cited in our memorandum.

There was the Woolworth case, which is cited on page 8 of our memorandum, which was a negligence action. After judgment was rendered, a motion was made for a new trial on the ground that evidence had been discovered as to the identity of the shoes which the plaintiff had been wearing at the time of the accident. Testimony as to those shoes had also been adduced at the trial. The Court denied the motion, and the denial was sustained by the Fifth Circuit Court of Appeals, on the ground that this was an issue which had been litigated and that a motion for a new trial is not a basis for relitigating old issues.

Then I also call Your Honor's attention to the Prisament case, which was a criminal prosecution for larceny, and it was alleged to have occurred in Georgia. The defendant produced evidence at the trial by witnesses, who testified

3256 that he had been seen in New York City on the date of the alleged larceny. He was nevertheless convicted, and he then filed a motion for a new trial on the ground that he had found additional witnesses who would testify that he was in New York City on this day of the larceny. The Court specifically overruled the motion, saying that that was not proper ground for a motion. It would merely add to evidence which was in the record, and it had nothing new. It was merely cumulative and corroborative of evidence previously introduced.

That is exactly what we have here. Fritz von Opel took the stand, as Your Honor well remembers, and for the first time we heard testimony in this case that there was a waiver in 1935, at the very time when the Gold Case was pending in the United States courts.

Dr. Gfos took the stand and said the same thing.

They produced documents which they claim showed waiver.

Then that is where it stops.

We produced evidence to the contrary. We produced the testimony of Mr. Houghland and Mr. Crittenden as to declarations and admissions which were inconsistent with the waiver; and that issue has been fully litigated from the very beginning.

It seems to me that certainly there is far less room for the exercise of the Court's discretion in a case such as this than there was in a criminal prosecution, where certainly the Court is even more zealous not to deprive a per-
3257 son of liberty if there be any ground for avoiding it.

So I submit, Your Honor, that the evidence is purely cumulative and corroborative and there is no basis for this motion.

There are just one or two further points I would like to make. Mr. Gallagher in his papers, and again today, has stated to Your Honor that at the time of the taking of the deposition in Wiesbaden the defendant's counsel did not ask Wilhelm and Marta von Opel about any waiver. I think that is a very interesting point. We were cross examining the man whom we claimed to be the real owner of this property. He testified that he did not own the property, that he had nothing to do with it, that he never had any usufruct.

Yet the plaintiff, who has the burden of proof in this case to show non-enemy taint, never asked him whether he had ever waived any usufruct; and they now say that it was our duty to ask Wilhelm and Marta von Opel whether he had waived. To me that is synonymous to expecting the United States attorney to ask a defendant, "You did not commit the crime, did you?" I think that is all it amounts to.

Then in the affidavit of Dr. Kronstein and in the affidavit of Mr. Connor, who was then taking the deposition as counsel for the plaintiff, the incredible statements are made that they did not think it necessary to ask Wilhelm von Opel as to whether he had waived or not. To me,
3258 Your Honor, that is completely ridiculous. You certainly would think it necessary to ask the persons who were the alleged holders of a usufruct whether they had waived it or not and not expect to come into court and prove a waiver by purely secondary evidence.

Now they come in and they say, "Wilhelm von Opel is dead. We can't get his testimony any more. We will give you hearsay testimony as to whether he waived it or not." And that is what the result leads to.

Furthermore, the evidence which is contained in Miss Firnhammer's affidavit, as Mr. Gallagher apparently very well recognizes, does not relate at all to any waiver by Marta von Opel. Marta von Opel, as Your Honor will recall, also held the usufruct. It was held by both, but thi proposed witness would only testify as to a waiver by Wilhelm.

Plaintiff's answer to that is that the Court well knows that Wilhelm managed everything on behalf of his wife. There is no such testimony in this record, nor is there any testimony that, under German law or any other law, Wilhelm von Opel could waive a property right, an in rem right, belonging to his wife. In fact, that is not the law.

So that I submit, Your Honor, that even if this testimony were admitted, there would still be a failure to show that Marta von Opel had ever relinquished anything.

As to the prayer for reopening this case for allow-
3259 ing the testimony of Marta von Opel, I see no basis upon which that can be raised at all. Certainly that is not newly discovered evidence. There is no claim that it is subsequent, and no claim could be made. All that it can be is that there was neglect in the preparation of the

case, and I submit, Your Honor, that that is the basis of this motion.

I should also like to call Your Honor's attention to this deposition in Wiesbaden, to which plaintiff has referred. There is not one word in this deposition, by Wilhelm von Opel, Marta von Opel, or Daniel Gros, to the effect that Wilhelm von Opel or Marta von Opel ever waived their usufruct. The closest you come to it is in the testimony of Daniel Gros, in which he says, "I advised Wilhelm von Opel that the only thing for him to do was to abandon his usufruct." That is not testimony as to waiver.

The exhibits to which the plaintiffs referred are also interesting, since three of them mention no waiver at all. One of them refers to a waiver which is to be written up in the future, and the other two are memoranda submitted by Daniel Gros to the German authorities, in 1936, the year after the waiver was alleged to have been made, in which he asks the authorities to find as a fact that there is a claim in existence against the son.

I submit, Your Honor, that on the basis of all this there has been a complete failure of meeting the heavy
3260 burden which is imposed upon the plaintiff in order to secure a new trial after a lengthy and protracted one such as we have had.

Your Honor will well remember your comment to Mr. Gallagher last March, when he mentioned filing a motion for a new trial, in which you said, "You had better labor pretty hard as to why you could not get it before you tried this case." I think that ruling holds.

Mr. Gallagher: I have nothing to say, Your Honor.

* * * * *

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TRANSCRIPT OF RECORD

(Pages 1803 to 2336)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 178

UEBERSEE FINANZ-KORPORATION, A. G.,
PETITIONER,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL AND AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JULY 7, 1951.
CERTIORARI GRANTED OCTOBER 15, 1951.

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,464

UEBERSEE FINANZ-KORPORATION, A. G.,

Appellant,

—against—

J. HOWARD McGRATH, Attorney General and as successor to the Alien Property Custodian,

Appellee.

Appeal from the District Court of the United States for the District of Columbia.

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Plaintiff's Exhibit 3

April 11, 1929

National City Bank
55 Wall Street
New York City

Gentlemen:

I beg to enclose herewith Certificates Nos. 1 to 600 inclusive, representing 600 shares of the capital stock of Adam Opel Aktiengesellschaft, of the par value of 10,000.00 Reichsmarks a share, to be held by you upon the following terms and conditions, viz:

At the request of General Motors Corporation you are to make delivery thereof to it against the receipt by you for my account of the purchase price as specified below:

(1) Up to and including March 31, 1931, at the price of 24,000.00 Reichsmarks a share.

(2) After March 31, 1931 and before April 1, 1932, at the price of 27,500.00 Reichsmarks a share.

(3) After March 31, 1932 and before April 1, 1934, at the price of 30,000.00 Reichsmarks a share.

At the request of the undersigned, you are to deliver said Certificates to General Motors Corporation, upon the receipt by you for my account of the purchase price hereinafter set forth:

(4) Up to and including March 31, 1931, at the price of 23,000.00 Reichsmarks a share.

(5) After March 31, 1931 and before April 1, 1932 at the price of 29,000.00 Reichsmarks a share.

(6) After March 31st, 1932 and before April 1st, 1934, at the price of 29,000.00 Reichsmarks a share.

Notice of intention to exercise said right to purchase or sell is to be given in writing by registered letter thirty days in advance.

In the event that neither party exercises its right to buy or sell hereunder, said Certificates are to be returned to the undersigned on April 1, 1934.

Kindly acknowledge receipt and oblige.

Yours very truly,

sgd. Dr. Wilhelm von Opel

Accepted.

General Motors Corporation

By sgd. John Th. Smith
Vice President.

Plaintiff's Exhibit 4

Abschrift.

Power of Attorney.

Know all men by these presents that I, the undersigned Geheimer Kommerzienrat Dr.ing.h.c. Wilhelm von Opel have made, constituted and appointed and by these presents do make, constitute and appoint my son Mr. Fritz von Opel my true and lawful attorney for me and in my name, place and stead to negotiate with the General Motors Corporation in New York and/or the National City Bank of New York in New York on all matters connected with or concerning my shares (Aktien) of the Adam Opel Aktiengesellschaft Nr. 1-600 and to give instructions for sale of said shares or for their exchange against other shares or

securities and/or bonds and to ask for payment to my account with the said National City Bank of New York in New York of all sums of money which are or shall become due and payable to me from said General Motors Corporation and/or to ask for transfer of all shares or securities and/or bonds in exchange of my said shares of the Adam Opel Aktiengesellschaft or any part thereof. to my said account with the National City Bank of New York and on receipt thereof or any part thereof for me and in my name to give, sign and execute good and proper acquittances or other discharges for the same or for such part or parts thereof respectively as shall be transferred to my said account with the National City Bank of New York, and to sign, seal and execute all papers, writings and documents necessary in that behalf; GIVING AND GRANTING unto my said attorney full power and authority to do and to perform every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might do if personally present hereby ratifying and confirming all that my said attorney shall lawfully do by virtue hereof.

In witness hereof I have hereunto set my hand and seal.

This sixth day of October 1931.

Signed, sealed and delivered in presence of

gez. John A. Beywater gez. Dr. Wilhelm von Opel

Plaintiff's Exhibit 5

Ruesselsheim, October 5, 1931

I, the undersigned Geheime Kommerzienrat Dr.ing.h.c. Wilhelm von Opel, declare that my property and the property of my wife Marta, nee Bade, are community property. Shares numbered 1 to 600 of the Adam Opel Aktiengesell-

schaft in Ruesselsheim, Main, having a par value of RM 6,000,000.00 (six million), are part of our community property. It is our common desire that these stocks remain with the male line of our family in order to preserve a personal connection between the bearers of the name of Opel and the work of our father Adam Opel.

In view of the premises I, with the consent of my wife, make a gift from our community property to my son Fritz von Opel of the shares owned by us and mentioned above, of the Adam Opel Aktiengesellschaft in Ruesselsheim, Main, Nos. 1 to 600, having a par value of RM 6,000,000.00 (six million). These stocks are deposited at present with the bank.

I, the undersigned Fritz von Opel, accept the gift.

I, Wilhelm von Opel, herewith transfer title to these shares to our son Fritz von Opel by assigning to him our claim for the delivery of these shares to us.

The usufruct in the shares is not assigned to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the death of the survivor of them. However, 20% of all dividends and interest received will accrue to Fritz von Opel.

If the parents Opel should predecease Fritz von Opel, the above described gift shall be considered as an advancement and shall be deducted from his share in such property as might be inherited by him or his sister, Mrs. Elinor Sachs, nee von Opel, or in case of her prior death, by her issue.

For this purpose the value of the shares shall be fixed as the value at the time when the duty to account for the advancement arises.

If this value is higher than the present value, the higher value shall apply, if it is lower, then the lower value.

In the event that the parents Opel shall not have drawn in full or in part the income from the shares accruing to them by virtue of their usufruct, the advancement to Fritz von Opel shall be deemed to have increased by the income not drawn and he shall be accountable therefor.

If the shares should be sold or exchanged against other property the proceeds from such sale or the property taken in exchange shall be substituted for the shares, after the usufruct of the parents Opel has been safeguarded. All provisions stipulated above will then fully apply to such substituted property.

If Fritz von Opel predeceases his parents without leaving legitimate issue, the gift executed by this document will become void. The stocks or the property substituted therefor including the income accrued but not drawn will then revert to the parents Opel or the surviving parent.

sgd. FRITZ VON OPEL sgd. DR. WILHELM VON OPEL

I, the wife Marta von Opel, nee Bade, agree to the above agreement.

sgd. MARTA VON OPEL NEE BADE

Plaintiff's Exhibit 6

October 17, 1931

General Motors Corporation
1775 Broadway,
New York City

Gentlemen:

Referring to my communication dated April 11, 1929, addressed to the National City Bank, having to do with the

deposit of 600 shares of the Capital Stock of the Adam Opel Aktiengesellschaft, I beg to advise you as follows:

Pursuant to the terms thereof, notice is hereby given of my intention to exercise the right to sell as follows:

On November 16, 1931	100 shares
November 17, 1931	100 shares
November 18, 1931	100 shares
November 19, 1931	100 shares
November 20, 1931	100 shares
November 21, 1931	100 shares

The price is 26,500.00 Reichsmarks a share. In lieu of Reichsmarks payment may be made at your option in dollars at the average of the high and low rate of exchange prevailing on the date of delivery.

Kindly acknowledge receipt and oblige,

Yours very truly,

(sgd.) WILHELM VON OPEL
per Fritz v. Opel
Atty. in fact.

Receipt of the foregoing notice is hereby acknowledged, and payment will be made in dollars instead of Reichsmarks.

General Motors Corporation

By: (sgd.) JOHN T. SMITH
General Counsel

Plaintiff's Exhibit 7

Dr. Max Hachenburg
Prof. Dr. Sigm. Strauss
Dr. Fritz Bing
Dr. Hans Hachenburg

Mannheim, October 3, 1931

Dr. H/R.

Herrn

Geheimrat Dr. Wilhelm v. Opel

Wiesbaden

Steubenstrasse 34.

Dear Herr Geheimrat:

Yesterday I had a long discussion with your son. I delivered to him a written summary of the agreement in question. Complying with your wishes I prepared today a draft of the agreement itself. I am sorry that I did not have more time at my disposal for a study of the rather complicated matter. But I hope that the idea which you suggested to me can be realized in a way which conforms with the law and follows the proposal drawn up by me. However, I should like to point out the following:

1. The procedure itself is lawful. It is not an illegal transfer of capital. There is nothing to prevent you from giving part of your property to your son who is living abroad (p. 2).

2. To the extent that you reserve to yourself the usufruct and receive an income from it you are subject to income tax in Germany now as before. But if the holding company, to which the Opel shares will be assigned does

not distribute any dividend, no income tax will be payable by you.

My proposal is to have the holding company shares deposited for you. You will then be entitled to vote in the holding company, but only on such matters in which you have an actual interest. This would apply to the vote concerning the net profits; including those cases in which you might be compelled to draw, subsequently, the profits already transferred to reserve funds. On the other hand, the management of the holding company, including the adoption of other resolutions of the general meetings, will remain the responsibility of the actual shareholder, i. e., your son. Such an arrangement would, at the same time, stress the fact that this is not a fictitious transaction. It is your actual intent that the ownership pass to your son immediately, only the income is reserved to you.

3. In the event that you leave the net profits with the holding company your son would gain an advantage (p. 3) over your daughter. For this reason, I have provided in the contract that this would be increment, represented by the reserve funds of the holding company, is to be taken into account in settling the accounts between your two children; It seems also advisable for you expressly to confirm the provisions concerning the settlement between the children in your last will.

4. You are considering the possibility that your son might die before his parents without issue. To provide for this emergency, the gift is made subject to a condition subsequent. The donated property will then revert to the parents who made the gift, or to the parent who survives the son. This reversion of the property to the parents is tax exempt (section 18, number 12, of the Inheritance Tax Law). I even believe that in this case one might apply for the repayment of the gift tax which is payable now (see section 4 Reichsbewertungsgesetz—Reich Valuation Law—as amended May 22, 1931). Even in the case of gifts

which are subject to such a condition subsequent a gift tax must be paid at first. But if such condition occurs, then the assessment is to be adjusted, upon application, to the actual value of the acquired property.

5. The following two examples may serve to illustrate what significance these provisions may have for you (p. 4) from the point of view of taxation. First, the value of the Opel shares may be less today than it will be at some future date. In such a case, the gift tax is more important than it would be if, upon your death, the Opel shares or the substituted assets had a higher value. Of course, everything depends on how the economic situation will develop in the future. You will effect a saving of income tax in so far as, at your son's request, one quarter of the proceeds of the donated shares will accrue to him. Furthermore, an income tax obligation will not arise if the holding company does not distribute the net profits. The assets remaining with that company are not subject to income tax in Germany. The Reichsfinanzhof (Reich Revenue Court) has refused to hold that an income tax obligation exists in cases of German shares which had been assigned to a foreign holding company. The court regretted to have to arrive at such a decision but admitted that the present laws would not permit taxing net profits which had not been distributed (Reich Finance Court, im "St.u.W." ("Steuern und Wirtschaft")—1930, No. 972; Reichsbewertungsgesetz, Reich assessment Law, section 58, number 5). According to this decision, no income tax is payable if the profits of the holding company (p. 5) are not distributed. But this is not absolutely certain. For this proposition is not based on a statute, but on a decision of the Reich Tax Court. This court may change its opinion under the pressure of particular economic conditions, or a new statute or emergency order may make such profits taxable. Present day legislation and the manner of its enforcement do not guarantee the present situation to continue.

Another question to be examined is whether or not the transaction is required to be reported pursuant to section 9 of the Emergency Order (Notverordnung) of August 23, 1931. This order requires German tax payers to report foreign participations whenever they own, jointly with not more than 4 other persons, more than 50% of a company which has its domicile abroad. It is, of course, true that your son is the party in interest. He owns the shares of the holding company. But you are the usufructuary of the shares. According to the wording of the order, the usufructuary cannot be regarded as a party in interest under the terms of section 9 quoted above. But here again I must repeat that we are not on absolutely firm ground in interpreting our tax laws (p. 6). Any person failing to report is liable to severe punishment (section 13). As long as an authoritative interpretation by the Reich Minister of Finance is [not]* available, caution is advisable here, too. Therefore it will be necessary to report the facts to the Finanzamt (Revenue Office).

I wish to add in conclusion that you will have to include the usufruct, assessed in accordance with the provisions of the law, in your property tax return.

But the same would apply if the contract were to provide not for a true usufruct, but instead for a purely personal claim to the payment of a corresponding share of the profits. This right also would be part of your property. It is to be evaluated in the same manner as the usufruct itself.

With kind regards,

Yours sincerely,

(sgd.) Dr. Max Hachenburg

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* Translator's note: 'not' evidently omitted by mistake.

Plaintiff's Exhibit 8

[October 3, 1931]

GIFT AGREEMENT

SECTION 1.

Geheimrat Dr. Wilhelm von Opel and his wife nee ....., residing in Wiesbaden, make a gift, from their community property, to their son Fritz von Opel, residing in Antwerp, of par value RM 6,000,000.00 shares of stock of the Adam Opel Aktiengesellschaft in Ruesselsheim. These shares are No. .....

The donee accepts this gift gratefully.

The parents execute this gift by transferring the title to the donated shares. The shares are, at the present time, deposited with General Motors in New York. The title is transferred by assigning the donor's claim to have the shares delivered to them. This claim is assigned herewith. General Motors will be advised of the assignment of this claim by the parties concerned.

The following further provisions apply to the gift:

SECTION 2

The donors reserve to themselves for life (p. 2) the usufruct in three quarters i. e., in par value RM 4,500,000.00 of the donated shares. The balance of RM 1,500,000.00 is exempt from the usufruct. The donors' usufruct expires at the death of the last parents.

Mr. Fritz von Opel is entitled and, upon demand of the donors obliged, to assign the shares to a holding company which he owns. In this case the parents will have the usu-

fruct in 75 per cent of the shares which the holding company will be required to issue in exchange for the Opel shares. These shall be deposited in the name of the father, Geheimrat Dr. Wilhelm von Opel. After his death these shares shall be considered as deposited for the wife of Geheimrat Wilhelm von Opel. Geheimrat Dr. Wilhelm von Opel and, in case he should predecease his wife, his widow may vote the deposited holding shares by virtue of the usufruct, whenever the vote involves the declaration of the net profits and/or a resolution with respect thereto, including resolutions on the distribution of reserve funds. The holding company shall acquire the Opel shares on condition only that it will show on its books as an open reserve the net profits derived from the Opel shares or from assets substituted at a later date.

The net profits of the holding company are subject to the donor's usufruct only in proportion as they are derived from the Opel shares assigned to the holding company or from its substituted assets (p. 3).

The donors guarantee to the donee that the yield from that quarter of the gift which is exempt from usufruct, will amount to at least RM ..... ff it falls below that amount, the donee is entitled to claim the yield of the usufruct for himself, up to the guaranteed amount. If even this yield does not cover the amount, the donors are obliged to pay the deficiency. If in any one of the following years the yield from that quarter which is exempt from usufruct exceeds the guaranteed amount, the excess will revert to the donors until the guaranty payments made by them have been offset. The aforesaid guaranty promise does not apply whenever appropriate net profits of the holding company are available which remain undistributed by virtue of a resolution passed at a meeting of the shareholders.

SECTION 3

The son Fritz must account to his sister Mrs. ..... at their parents' death for the gift made to him in article 1 by Geheimrat Dr. Wilhelm von Opel and his wife.

If at the time when such obligation to account becomes effective the value of the Opel shares donated according to article 1 exceeds their value as of the time of the gift, then Fritz shall account for the (p. 4) excess amount. If the value is lower, his obligation is diminished accordingly. The same applies if other assets have been substituted for the Opel shares.

If the holding company has not distributed all or part of its profits, so that the usufructuaries did not draw the proceeds during their lifetime, these reserves together with the holding shares themselves will remain in the hands of the son Fritz von Opel to whom the gift was made. But his obligation to account to his sister Mrs. ..... increases by the amount of the reserves which the holding company accumulated from the proceeds of the Opel shares which it acquired or of the assets substituted for them.

SECTION 4.

If Mr. Fritz von Opel dies prior to his parents without leaving legitimate issue, the gift becomes null and void. This provision is made a condition subsequent of the gift. If the Opel shares which were donated to Mr. Fritz von Opel by his parents, were assigned to the holding company, the aforementioned condition shall apply to the holding shares which were substituted for the Opel shares. This also applies to that quarter of the gift which is not subject to the usufruct.

Plaintiff's Exhibit 9

Fundamental considerations

1. Father makes a gift to his son of a block of shares. The shares are assigned immediately. If they are not in the father's possession, the transfer is effected by assignment of the claim for delivery against the present holder. Gift tax becomes due at once unless an extension for payment is granted. Beside the donee, the donor is liable, since the donee has his domicile abroad.

2. When the parents die an accounting has to take place with regard to the gift between the two children, i.e. son and daughter. The moment the gift is made, the son must allow the value of the gift to be applied to his share of the estate. If at the time of the death of the parents no allowance is to be made for any increase in value. If a different arrangement is desired, it must be expressly provided that the value as of the death of the donor is to be taken into account in making the settlement. If the father does not avail himself of the usufruct discussed in figure 3 below, then the advancement will be increased by the amounts which the father did not draw.

3. The gift was made subject to a usufruct for life for the parents in three quarters of the gift. The proceeds accruing from the remaining (p. 2) one quarter are left to the son. The usufruct expires at the death of the surviving spouse.

Son is entitled to transfer the shares given to him to a holding company which is already existing and is owned by him. In this case, the parents' usufruct in the holding shares is substituted for the parents' usufruct in the donated shares. A claim to the usufruct can be asserted only to the extent to which the holding company has an income from the donated shares or from any other property that might take their place.

4. In order to secure the usufruct, the donated shares or the holding shares replacing them are deposited with a bank in the father's name. By virtue of his usufruct, the father is entitled to vote the shares in the case of such resolution of the holding company which dispose of the actual net profits. Father guarantees to his son that his 25% share of these profits will amount to at least RM

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5. If the son dies, without children, before his parents, the gift reverts to the parents. The gift is made on condition that it is to be terminated if the son either does not* survive both his parents or dies before his parents without leaving legitimate issue.

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* *Translator's note:* The typewritten word "nicht" is stricken out in the retyped copy of the German original: obviously by mistake.

Plaintiff's Exhibit 10

Dr. Max Hachenburg
Prof. Dr. Sigm. Strauss
Dr. Fritz Bing
Dr. Hans Hachenburg
Rechtsanwaelte
Mannheim

Mannheim, October 5, 1931
Dr. MH/R

Herrn
Geheimrat Dr. Wilhelm von Opel
Wiesbaden

Steubenstrasse 34

Dear Herr Geheimrat:

I wrote you on October 3.

Your son informed me that Dr. Faust is concerned about the problem whether or not an income tax may be payable

under the provisions of Section 30, subsection 3 of the Income Tax Act (Einkommensteuergesetz) if your son sells the shares which you transferred to him by way of a gift. In the meantime I have thoroughly re-examined this question. I cannot deny that there is some foundation for Dr. Faust's concern. To be sure, it is impossible to understand a rule of law according to which a stockholder of a German corporation who is residing abroad should have to pay an income tax in Germany if he sells these shares profitably. Suppose, a Dutch Bank (p. 2) deals in German securities. It pays taxes in Holland on the profits realized from buying and reselling the securities. Nevertheless it would also be subject to taxation in Germany, because the shares sold were German. The absurdity of such a conclusion tends to support my interpretation. The provision of Section 30, subsection 3 of the Income Tax Act creates a special burden on property hold in Germany. To subject an alien to taxation of the income derived from business carried on in Germany presupposes (Section 3, Subsection 2, No. 2, Income Tax Law) the presence of a place of business or of a permanent agent in Germany. In the special case of the resale of a block of shares this is not possible (see Eber's Kommentar yum Koerperschafts-Steuer-Gesetz, Bemerkung 31 zu Par. 13—Eber's Commentary on the Corporation Tax Law, note 31 to Section 13). There are, however, commentators who take a contrary view, namely the view which Dr. Faust has in mind (Rehdanz-Selle, Die Besteuerung der Auslaender im Deutschen Reiche—Taxation of Foreigners in Germany—page 39). This author takes the view that the profits realized from an advance of prices, to which Section 30 of the Income Tax Law refers, also accrue to foreign nationals. This is a conclusion based on conceptual logic only. Since Section 30 states: "As business income is to be considered . . ." the conclusion is drawn that profit obtained from such sales are to be considered as business profits and that for this

reason they are subject to the same taxes as those of a person doing business in Germany. I can thus understand why (p. 3) Dr. Faust raised this question. I still insist that no tax is payable for the reasons indicated above. I also believe that the Reichsfinanzhof (Reich Finance Court) will agree with this view, which is the only one that is economically justified. But you know, one can never predict, particularly in tax matters, what decision the authorities are going to make.

I believe, however, that the entire question is without practical importance in the present case. The special tax payable in the case of a sale of a block of shares is applicable only in the event that the seller owns personally or jointly with his nearest relatives, more than 25% of the capital stock. It is not necessary to sell 25%. It would be enough if the Opel family had retained more than 25% of their shares. But as far as I remember this is not at all the case. Thus, the whole question is without any practical importance.

Finally, the provision of Section 31 of the Income Tax Law must be considered. This article provides that the gift tax, which Mr. Fritz von Opel has to pay, is to be set off against the special income tax arising from the resale, provided that the shares are resold within the next 3 years.

Finally, I believe that upon the assignment of the shares to a holding company, as intended, no profit will be realized at all. If, later on, the holding company itself sells the Opel shares, this sale will not be considered a sale of the shares themselves. I do not believe that it is permissible to give the provision of Section 30, Subsection 3, of the Income Tax Law such a wide interpretation, all the more

so, since, as I have shown in my letter of October 3, an income tax does not become payable in Germany as long as the profits remain with the holding company.

With best regards

Yours truly,

(sgd.) Dr. Max Hachenburg

P.S. I arranged with your son that if possible we should meet and talk the matter over, in the course of this week. Please, be good enough to advise me at your convenience which day and hour would suit you.

The above.

Plaintiff's Exhibit 24

ORIGINS OF THE GIFT

In Germany I was not allowed to own interests in an automobile company either directly or indirectly. I had therefore made available abroad to my son, who blamed me for selling the firm, about francs 3,800,000.00, so as to give him a chance to participate in a foreign firm. But I reported this amount on September 9, 1931, in compliance with the foreign exchange control regulations of August 29, 1931. I informed my son thereof and informed him that the amount would probably have to be surrendered and that consequently he had no longer the possibility to invest in another firm. The amount in question was then actually surrendered.

A short time after I had thus informed my son, he came to me and proposed on that occasion that I should let him have my shares. That is how the idea of a gift originated.

At that time I told my son: Consult the attorney Mr. Hachenburg, who made our contracts, and find out if and in what form such an assignment is possible. If it is possible, I agree. But I am not going to pay for the consultation; you will have to pay all expenses yourself.

Attached hereto is the letter referred to from Mr. Hachenburg, attorney-at-law, to my son's secretariat. Gift executed in accordance with draft of Mr. Hachenburg, attorney-at-law.

Plaintiff's Exhibit 25

* * * *

1931 PROPERTY TAX RETURN

of Wilhelm von Opel, Geheimrat, Dr., in Wiesbaden, Steubenstrasse 34, and his wife Marta, nee Bade.

* * * * * *

IV. *Other assets, in particular capital* (see instructions, No. 8 to 22). What was the value of the other assets owned by you and your wife on January 1, 1931 (without deduction of debts) viz:

* * * * *

2. a. shares, mining shares, and participating certificates of German companies (see instructions No. 12)? (e.g. interim certificates, Reichsbank share certificates, shares of colonial companies) ..... RM 3,710,566.00
[4,910,556.00]

* * * * *

Re IV: Other property

2. a. *Shares, stocks and mining shares and participating certificates of companies in Germany.*

Nominal value	Name of securities	Taxing price Dec. 31, 1930	Market price
RM 6,000,000.00	Adam Opel shares	30.00	1,800,000.00

Plaintiff's Exhibit 26

Revenue Office Wiesbaden
tax file No. 18/533 Wiesbaden, August 2, 1932

Hern and Frau Dr. Wilhelm von Opel
Geheimer Kommerzienrat
34 Steubenstrasse
Wiesbaden

PROPERTY TAX ASSESSMENT

based on the property status of January 1, 1931

A. *Ascertainment of property*

According to the provisions of the National Valuation Act of May 22, 193... the total taxable property of yourself and your wife has been ascertained to have been RM 20,217,399.00 on January 1, 1931.

* * * * * *

II. Deviations from the statements made in your property tax return concerning property not specified under

* * * * * *

2. The "Adam" Opel stocks are to be valued at 100% — ½ = 50% ²— ; the other property—stocks, mining shares etc.—section 2ª—have been ascertained to be RM 4,910,566.30.

* * * * * *

Plaintiff's Exhibit 29

[Reichsfinanzverwaltung]

To which Revenue Office have you submitted your last property tax return? Revenue Office Wiesbaden

Under which tax number? 18/533

REPORT SUBMITTED PURSUANT TO THE LAW PUNISHING TREASON AGAINST THE NATION.

by

Dr. Wilhelm von Opel, geh. Kommerzienrat, of Wiesbaden, 34 Steubenstr.

I herewith declare the following property and foreign exchange and vouch for the following:

I have declared my property and foreign exchange in full, and to the best of my knowledge and belief.

This declaration also includes the property and foreign exchange belonging to my wife Marta von Opel, nee Bade.

Wiesbaden, October 27, 1933

(sgd) DR. WILHELM VON OPEL

* * * * * *

6. *Other claims* (also claims originating from life-capital- and annuities-insurances) provided the debtor has neither a residence nor his domicile nor his principal office or place of management in Germany, irrespective of whether the claims are payable in Reichsmark or in foreign currency. Mortgage claims are to be listed separately. Other claims may be stated in one lump sum only if they are payable in the same currency and by the same debtor. Designation of the debtor, the reason for, and the amount of the debt. In case of insurances state also the amount of the insurance. In case of claims which are secured by mortgages on real estate in Germany state also the real estate which is encumbered.

Conditional usufruct according to gift contract of October 5, 1931, which has been submitted to the Wiesbaden revenue office.

See also exhibit: explanations re 6/.

* * * * *

Plaintiff's Exhibit 30

* * * * *

1935 PROPERTY TAX RETURN

of von Opel, Wilhelm, Geheimrat Dr. ing. h.c.
in Wiesbaden, Steubenstrasse 34
and of his wife Marta, nee Bade

* * * * *

IV. *Other property, especially capital property.*

* * * * *

f. rights retained for old age, rights of usufruct, and other rights of annuities (cf. instruction) ..... see appendix 5

* * * * *

Plaintiff's Exhibit 30E

Re IV f:

Enclosure 5

By agreement dated October 5, 1931, I made my son Fritz von Opel a gift of Opel shares of a nominal value of RM 6,000,000.00 reserving to myself a right of usufruct on these stocks respectively the substitute values therefor. According to the unanimous opinion of all the parties concerned this right of usufruct was to be utilized only in case I should become financially dependent upon the receipts from this right of usufruct.

This right has not yet been asserted, nor can I tell whether and to what extent I may have to fall back on it. Therefore I do not believe that for the present this right of usufruct should be listed as an asset.

June 7, 1935.

Plaintiff's Exhibit 35

Form I

Original Herrn Oberfinanzpraesidenten Berlin

To be read carefully before filling in.

Country: Great Britain

I. *Information concerning the person subject to the duty to report.*

1. Name:

Geh. Kommerzienrat
Dr. ing. e.h. Wilhelm von Opel

3. Residence:

Wiesbaden, 34 Steubenstr.
secretariat: Ruesselsheim/Main

4. Nationality:

German

II. *Information concerning the claims.*

1. Kind of claim:

claim originating from loan

2. Amount of claims in Reichsmark—or foreign currency:
(after deduction of amounts repaid)
in terms of currency owed:

USA Dollars 20,000.—(twenty thousand)

3. Information regarding debtor:

Manfred Wroker-Flatow
c/o Sinfra Ltd.

Thames House, Millbank,
London SW 1,

at the time the loan was taken up of German nationality, present nationality unknown.

4. Date due or terms as laid down in the contract:

Repayment was to be made in 10 annual instalments of $2,000.00 each, beginning April 1, 1936.
However debtor is unable to pay.

5. Rate of interest:

From April 1, 1935 on interest was to be paid on the loan, at the Reichsbank, discount rate in force at the time, at the end of each loan term, for the first time on July 1, 1935.

6. Is claim recognized by debtor, or has it been contested?

Claim is uncontested.

7. Has creditor any bond or surety in hand which is within Germany? State particulars and their value.

(1) Life insurance of RM 40,000.00 with the Iduna Life Insurance Company in the name of Manfred Wronker-Flatow and in favor of his wife, Alexandra Wronker-Flatow.

(2) Life insurance with the French Life Insurance Company L. Urbaine, amounting to French francs 125,000.00, in favor of his wife.

8. Does a contract or other instrument exist covering the claim?

Yes, an acknowledgement of the debt, signed by the debtor and his wife and dated Wiesbaden, March 16, 1931.

9. Has claimant heard of any measures by which the claim has been disposed of in the enemy country, for instance by payment to the Alien Property Custodian or other authority abroad?

unknown.

10. *Remarks*: Payment of the loan and interest accrued have repeatedly been requested without results because debtor is unable to pay. The existence of the claim has been reported repeatedly, for inst. on April 16, 1937 to the Foreign Exchange Department of the Reichshauptbank, Berlin SW 111, in compliance with the notice of the Reichsbankdirektorium of March 31, 1937; and on May 28, 1938, to the Reichsbank, Wiesbaden, in compliance with the notice of the Reichsbankdirektorium of April 30, 1938.

I declare to have given the above information to the best of my knowledge and belief; especially that the amounts claimed are correct and complete.

Ruesselsheim/Main, September 28, 1940

(sgd) Dr. Wilhelm von Opel

by proxy (illegible)

Plaintiff's Exhibit 35A

September 28, 1940

An den
Herrn Oberfinanzpraesidenten Berlin
(Devisenstelle)

Kurfuerstendamm 193/94
Berlin W 15

Subject: *Order to register German property in enemy countries of August 7, 1940*

Enclosed I submit to you the form concerning my claim against Mr. Manfred Wronker-Flatow, c/o Sinfra Ltd., Thames House, Millbank, London SW 1, duly filled in, in threefold execution, in accordance with above order to register German property in enemy countries.

Heil Hitler

Plaintiff's Exhibit 36

April 16, 1937

[2 reports =
1) usufruct
2) Wronker-Flatow]

An die
Reichsbankstelle Wiesbaden,

Wiesbaden.

In compliance with an order of the Reichsbankdirektorium of March 31, 1937, concerning the declaration of German claims abroad, I am hereby as a precaution declaring once more the "qualified right of usufruct", which I have already tendered several times, and furthermore beg refer to the last letter regarding this subject of attorney-at-law Dr. D. Gros, Berlin W 62, 33 Budapesterstrasse, dated January 27, 1937.

Mit deutschem Gruss
stamp: Dr. Wilhelm von Opel
by (sgd.) B. Frenzel

Kind	Currency amount	Converted intc Reichsmark	Kind of Claim	due date		Name and residence of debtor	business or occupation
1	2	3	4	5	6	7	8
X $	20,000.–	49,800.–	loan claim	.....		Mr. Wronker-Flatow c/o Sinfra Corp. One Exchange Place, Jersey City, N. J.	formerly an attorney-at-law

Repayment was to be made in 10 annual instalments of $2,000.– each, beginning April 1, 1936.— Up to date no payment has been made because debtor is unable to pay.

* * * * *

Pursuant to the order of the Reichsbankdirektorium of March 31, 1937 (Reichsanzeiger (German National Gazette), No. 72, of March 31, 1937) I am/we are hereby declaring on the reverse of this page my/our claims which according to the status as of March 31, 1937, have fallen, or will fall, due from capital transactions with the U. S. A.

I am/We are aware of the fact that this declaration is not considered as a tender in the terms of the foreign exchange regulations.

To the Foreign Exchange Department of the Reichshauptbank Ruesselsheim, April 16, 1937
Delivery control *Berlin SW 111*

Plaintiff's Exhibit 37

1830

Plaintiff's Exhibit 38

Revenue Office. Wiesbaden, January 7, 1932

List S No. 67/1931
Debit Book No. 321/1931

Preliminary Tax Assessment

A. *Tax assessment*

1. Pursuant to the Inheritance Tax Act, a tax is assessed on Geh. Kommerzienrat Dr. Wilhelm von Opel's gift of October 5, 1931, payable by the donee mentioned overleaf, and amounting to RM 200,000.00.

3. The total tax amounting to RM 200,000.00 is payable on or before February 25, 1932.

Herrn Geh. Kommerzienrat
Dr. Wilhelm von Opel
34 Gartenstrasse

by proxy:
(sgd.) von Claar
for a true copy
(signature illegible)

tax rate per cent	To be paid from RM	amount RM	Remarks [92]
10	2,000,000.00	200,000.00	The assessment differs from the tax return in the following items: Please fill in and return the attached tax return. Final assessment will be made after the tax return has been received and the market value as of the date the gift was made has been ascertained by the competent Revenue Office.

Current number	family name and christian name of beneficiary	relationship between beneficiary and testator —donor—	value of acquisition in detail	total RM
1	von Opel, Friedrich	son	~~2,000,000.00~~	

Plaintiff's Exhibit 39

Copy

Finanzamt Wiesbaden
file No. 5 S. 67/1931

Inheritance tax

Important

1.) This tax declaration is to be returned on before February 10, 1932, properly completed and personally signed.

2.) If the return is delayed an advance payment may be demanded, and an additional 10% may be added to the assessed tax amount.

3.) The making of a return can be enforced by fines.

4.) All statements are to be made on the basis of the conditions as they were at the time of the gift.

5.) Every question must be answered separately. If space allotted in this form is not sufficient a separate sheet is to be used and attached.

6.) The decision as to what is taxable and what is tax-exempt rests solely with the Finanzamt, not with the taxpayer.

Tax declaration S

concerning an inter vivos gift made by the Geheimer Kommerzienrat Dr. Ing. e.h. Wilhelm von Opel
to Friedrich von Opel

Questions:	*Answers:* (each question is to be answered)
1. family and surname, occupation or profession, nationality, and residence (city, street, and house number of the donor)?	Dr.-Ing. e.h. Wilhelm von Opel geh. Kommerzienrat, Wiesbaden, Steubenstrasse 34.
2. family and surname, occupation or profession, nationality, and residence (city, street, and house number) of the donee	Dipl. Ing. Fritz von Opel, Brasschaat, near Antwerp
3. Relationship between donor and donee? Give exact details, not: nephew, uncle etc. but son of brother, granddaughter of sister, and so on	son
4. Of what did the gift consist? Give exact details, especially for gifts of real estate: sheet in the land register, cadastral number, location, size, used for which purpose?	RM 3,000,000.00 par value shares of the Adam Opel A.G.
If bonds or shares: quantity, kind, special designation, nominal value, price and quotation, rate of interest, due-dates of interest payments, etc.	see above
5. Was the gift made for a special purpose, or were special conditions attached to it?	see enclosed agreement

Questions:	*Answers:* (each question is to be answered)
6. When and in what way has the gift been made? (registration in land-register, assignment etc.)	see enclosed agreement
7. What was the value of the gift (in Reichsmarks) at the time it was made, and how has this value been ascertained	see separate sheet (to follow, since the balance sheet of Adam Opel A.G. is not yet quite ready and consequently the records not yet completed.
8. Beginning with what date is donee entitled to receive interest or shares of profits on the securities or the capital amount?	see agreement
9. Where was the object of the gift at the time the gift was made? (see No. 6 above)? in this country or abroad?	see agreement
10. Is a document in existence concerning the gift? In particular has the gift been legally certified? By whom, when, under what file number? Attach, if you can, the original deed or a copy thereof.	see agreement
11. Has the donee received gifts before from the donor? (i.e. dowries, etc.) When and how much?	no

I declare that I have stated the above to the best of my knowledge and belief.

Ruesselsheim a.M., January 15, 1932

Plaintiff's Exhibit 40

Wiesbaden Revenue Office — Wiesbaden, February 12, 1933

E

List — No. 67/1931

S

Debit Book No. 321/1931

Further preliminary assessment of tax

A. *Tax assessment*

1. Acording to the Inheritance Tax Act taxes on the gift of Geh. Kommerzienrat Dr. Wilhelm von Opel and his wife, of October 5, 1931, payable by the beneficiary named overleaf, are for the time being assessed at ..... RM 462,000.00.

2. .....

3. As far as not already due, a total amount of ..... RM 462,000.00, has to be paid on or before April 1, 1933.

B. *Warning*

Notice of appeal against the assessment does not prevent the decision from becoming effective (article 235 Reich Tax Code), nor, in particular, will it prevent the tax from being collected. The tax is payable on the aforementioned date even in case a delay should occur in the settlement of the estate.

As deputy

An : (sgd) von Claer

Herrn Geh. Kommerzienrat — for a true copy

Dr. Wilhelm von Opel (sgd) Höhne

Gartenstrasse 34

Wiesbaden

Tax rate per cent	on RM	Payable amount RM	Remarks
			The following items of the tax assessment differ from the tax return:
			According to the deed of gift of October 5, 1931, Dr. Wilhelm von Opel and his wife, who are owing their property jointly, are giving to their son Fritz von Opel
11	2,100,000.00	231,000.00	600 shares of the Adam Opel A.G., Ruesselsheim, owned by them, nominal value RM 6,000,000.00
			effective as of October 5, 1931, with the reservation of the usufruct of 80% of the donated shares for the life of the donor.
			The usufruct will expire with the death of that donor who lives longest.
			In case the donee should die before his parents and without legitimate issue, the gift will become ineffective.
11	2,100,000.00	231,000.00	For the time being this condition shall not influence the taxability of the gift (section 4, Reich Valuation Act, section 54 A.B. Inheritance Tax Act).
		462,000.00	
by preliminary tax assessment of January 7, 1932		200,000.00	According to information received from the Mainz/Land Revenue Office, the Adam Opel shares are to be valued at 70% as of the date of the gift.
were demanded; thus remain to be paid.		262,000.00	

Therefore the value of the gift is 70% of RM 6,000,000.00, i.e. RM 4,200,000.00.

The value of the right of usufruct is 8.5 times (age of the youngest donor: 54 years) its one year value, i.e. of 80% of the whole usufruct.

But in the present preliminary tax assessment the value of the right of usufruct has been disregarded, because according to counsel's letter of July 1, 1932, to the Reich Minister of Finance, the General Motors shares given in exchange are not likely to yield any dividend.

The final assessment will be made as soon as an estimate is possible of the actual annual value of the donor's usufruct, i.e. of what average proceeds can be expected in the future from the 134768 General Motors shares which had been given in exchange for the gift.

Please submit appropriate records (yields of 1930, 1931, 1932, and estimated yield for subsequent years).

	Name of person acquiring	Relationship between person acquiring and testator—donor—	Value of acquisition
	I. *Donation of the husband Wilhelm von Opel*		
1	von Opel, Fritz	son	RM 2,100,000.00
	II. *Donation of the wife Wilhelm von Opel*		
2	von Opel, Fritz	son	RM 2,100,000.00
			RM 4,200,000.00

Plaintiff's Exhibit 41

Dr. Faust — February 21, 1933

An das
Finanzamt Wiesbaden

Wiesbaden

Subject: List E/S No. 67/1931 debit book No. 321/1931. Further preliminary tax assessment of February 13, 1933.

I hereby appeal against the further preliminary tax assessment of February 13, 1933, concerning the gift tax amounting to RM 262,000.00.

The Opel shares are valued therein, in accordance with a proposal of the Finanzamt Mainz/Land, at 70%. This proposal of the Finanzamt Mainz/Land is untenable; it conflicts with the legal opinion of the Darmstadt Chamber of Commerce, which the Finanzamt Mainz/Land itself had requested. Evidently the Finanzamt wants to base the valuation exclusively on the singularly fortunate conditions of the sale. That this is not permissible, is a long established principle of law. But, in addition, it must be remembered that this sale took place abroad and that therefore the sale cannot, as such, furnish a standard for the valuation of the shares in no event, however, without adjustment; for the valuation domestic conditions only can be taken into account. Finally I wish to point out that the Darmstadt Chamber of Commerce is going to amend shortly the opinion it rendered at the time.

In my opinion, a valuation which is so difficult and of so far reaching consequences for the individuals concerned

should not be made without a minute and searching investigation of the facts, and should be based not simply on the conclusions reached so far. In view of the high amounts which are at stake for the taxpayer it is absolutely necessary to exhaust all possibilities which could in some way help to arrive an objective decision. Under no circumstances estimates should be used which are without reliable foundation and may result in unjustifiable disadvantage to the taxpayer.

For these reasons I request an extension, until further notice, for that portion of the gift tax which has not yet been paid, at any rate until such time as the supplementary opinion of the Chamber of Commerce will be available. I will try to have the Chamber of Commerce supply this opinion as quickly as possible.

In view of the fact that on the 25th instant a further instalment of RM 50,000.00 is due I wish to ask you to grant the extension applied for at your earliest convenience.

Yours very truly,

for Dr. Wilhelm von Opel

F.

Plaintiff's Exhibit 45

January 2, 1932

To the
Revenue Office
Wiesbaden

[115/11]

By deed dated October 5, 1931, I gave to my son Friedrich von Opel Opel shares of a nominal value of *RM 6,000,000.00*. What regards the value of the shares, I dare

say that in view of today's quotation of the shares, the balance for which closed with a loss of about *RM 2,288,224.34* for the business year 1929, with a loss of about *RM 13,884,792.11* for the business year 1930, and which, in view of the monthly statements on hand until now, is likely to do no better in the business year 1931, a quotation of about 25-30% per share must be considered as very appropriate.

I am hereby reporting this gift in accordance with article 25 of the Inheritance Tax Act.

Yours truly,

[Note: The original (sheet 1 of the gift tax files No. 67/31 and 13/33) has been signed by Geheimer Kommerzienrat Dr. Wilhelm von Opel March 28, 1934. (sgd.) Hagemann, Oberzollingspektor.]

Plaintiff's Exhibit 46

From March 1930 to June 1932 inclusive

Schweiz. Kreditanstalt,
Zuerich.

Income tax 1930 blue
Income tax 1931

Special account
current account

1931			
Jan. 11	transfer from special account (see letter of January 13, 1931) [no interest]	+	27,961.85

O.B. 19	payment on letter of credit of W.v.O. (+ — .50 postage)	—	27,000.50
		+	961.35
interest st (?)			
Special account May 11	transfer from special account, income tax on special account	+	25,633.35
		+	26,594.70
interest st (?) June 16	1% interest on credit balance according to closing balance	+	43.15
		+	26,637.85
B 16	postage and small expenses according to closing balance	—	1.85
		+	26,636.00
1931 June 16	balance	+	26,636.00
O/p (1932) Aug. 26	withdrawal according to W.v.O.	—	16,500.00
see entry Jan. 4, 1932		+	10,136.00
	remittance to Ungarische Allgemeine Creditbank	—	5,000.00
		+	5,136.00
[1932] Oct. 5	remittance to M. Thalberg, Zarich	—	500.00
		+	4,635.00

Interest (?) special account Nov. 11	Transfer from special account [Income tax on special account]	+ 43,256.25
		+ 47,892.25
special account 14	transfer of the special account....	+3,845,000.00
		+3,892,892.25
Disco 40424 Dec. 3	remittance to Reichsbank Direktorium Berlin, equivalent refunded by Reichbank to DDBK, December 8, 1931	— 43,256.25
		+3,849,636.00
B (1932) 16	Expenses according to extract of current account'	— 2.50
		+3,849,633.50
attachment account 24	transfer to "attachment" account	—3,500,000.00
		+ 349,533.50
interest st (?) 1932 31	interest on credit balances according to closing balance.....	+ 2,057.84
		+ 351,701.34
B/1932 31	postage and small expenses according to closing balance	— 3.34
		+ 351,698.00

[Income tax 19 (32 see account (illegible)]

1932	balance	+	351,698.00
see entry of August 26, 1931			
January 4	remittance from Ungarische Allgemeine Creditbank (own account)	+	5,000.00
		+	356,698.00
interest st (1)	interest on the above	+	1.05
		+	356,699.05
interest st (1). 15	½% interest according to the closing balance	+	73.96
		+	356,773.01
B 15	postage and small expenses according to closing balance	—	1.51
		+	356,771.50
account No. 40424 15	remittance to Reichsbank Direktorium Berlin, equivalent refunded by Reichsbank to DDBK. Frankfurt/M. value per Jan. 1932	—	356,771.50

Special account.

tied up from March 11, 1930 to September 11, 1930 at 4% p.a.
tied up from Sept. 11, 1930 to Nov. 11, 1930 at 1½% p.a.
tied up from Nov. 11, 1930 to Jan. 11, 1931 at 1½% p.a.
tied up from Jan. 11, 1931 to May 11, 1931 at 2% p.a.
tied up from May 11, 1931 to Nov. 11, 1931 at 2¼% p.a.

Swiss francs account.

1930			
March 11	own remittance		+3,787,990.80
Sept. 11	4% interest from March 11 to Sept. 11, 1930	+	75,759.80
			3,863,750.60
Nov. 3	1½% interest from Sept. 11 to Nov. 11, 1930	+	9,559.40
			+3,873,310.00
Dec. 4	Expenses on letter of credit	—	126.00
			+3,873,284.00
Dec. 31	payment on letter of credit and expenses of — 50	—	10,000.50
1931			
Jan. 11	1½% interest from Nov. 11, 1930 to Jan. 11, 1931	+	9,678.35
			+3,872,961.85
interest st (?) custodianship account 11	transfer to custodianship account according to letter of January 13, 1931	—	27,961.85
			+3,845,000.00
interest st (?) May 11	2% interest from January 11 to May 11, 1931	+	25,633.35
			+3,870,633.35

general account 11	transfer to general account	—	25,633.35
			+3,845,000.00
interest st (?)			
November 11	2¼% interest from May 11, to Nov. 11, 1931	+	43,246.25
			3,888,246.25
general account 11.	transfer to general account	—	43,246.25
			+3,845,000.00
current Swiss francs account 11	transfer to current account		—3,845,000.00

Attachment account in Swiss francs.

1931		
December 24	balance carried forward from the current Swiss francs account (value per December 22)	+3,500,000.00
1932		
June 16 status of July account Reichs-Kredit Gesellschaft	½% interest from December 22, 1931 to June 30, 1932	+ 1,118.00
July 7, 1932		+3,501,118.06
B. (July) 30	postage and small expenses	— 2.06
30	remittance to the account of the Reichsbank Direktorium Berlin in favor of Wv.O. at Reichs-Kreditgesellschaft Berlin	—3,501,116.00

Plaintiff's Exhibit 47

September 22, 1933

EFR

Mr. Fritz von Opel,
New York City.

Dear Sir:

We quote the following extract from the cable received from the Deutsche Bank & Disconto-Gesellschaft, Frankfurt on October 24, 1931:

"GEHEIMRAT DR. WILHELM VON OPEL RUESSELSHEIM INSTRUCTED US TO CABLE TO YOU THE FOLLOWING NEW POWER OF ATTORNEY — UNTIL YOU HEAR FROM ME TO THE CONTRARY YOU ARE HEREBY AUTHORIZED AND REQUESTED TO ACT UPON ANY AND ALL INSTRUCTIONS WHICH MAY BE GIVEN YOU FROM TIME TO TIME BY MY SON FRITZ VON OPEL REGARDING ANY AND ALL FUNDS OR OTHER PROPERTY AT ANY TIME WITH YOU FOR MY ACCOUNT AND TO HONOR EACH AND EVERY WITHDRAWAL HE MAY REQUEST THEREFROM — SIGNED DR. WILHELM VON OPEL."

Very truly yours,

Assistant Vice President.

Plaintiff's Exhibit 49

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 26453

UEBERSEE FINANZ-KORPORATION, A. G.,
Plaintiff,

—v.—

TOM C. CLARK, Attorney General,
As Successor to the Alien Property Custodian,
Defendant.

STIPULATION

IT IS HEREBY STIPULATED between the parties that if Dr. Joseph Henggeler, Attorney at Law, Lowenstrasse 1, Sihlporte, Zurich 1, Switzerland were called as a witness upon the trial of this action he would testify as set forth in his affidavit dated September 2, 1948, executed in Zurich, Switzerland, an original of which is attached hereto;

IT IS FURTHER STIPULATED that the photostatic copy of the confirmation of the Liechtenstein Government dated April 8, 1947, annexed to the affidavit hereinbefore referred to is a true and correct copy of the same and was delivered to Dr. Henggeler upon his demand;

IT IS FURTHER STIPULATED between the parties that Dr. Henggeler would testify that he knows that Mr. Fritz von

Opel maintained a residence and home in St. Moritz, Switzerland since about 1933;

IT IS FURTHER STIPULATED between the parties that Dr. Henggeler would testify that he concluded many years ago that Fritz von Opel had established his residence and domicile in Switzerland;

IT IS FURTHER STIPULATED that Dr. Henggeler would testify that in his negotiations with the Swiss Tax Office he was advised by that Department of the Swiss Government that it had concluded that Fritz von Opel was a domiciliary of Switzerland subject to the tax imposed by Switzerland and that he knows of his own knowledge that Mr. Fritz von Opel has paid the assessed tax for many years;

IT IS FURTHER STIPULATED that no officers of the Swiss Tax Department ever took any position with him other than that Fritz von Opel since 1939 was a Liechtenstein citizen;

IT IS FURTHER STIPULATED that the testimony of Dr. Joseph Henggeler may be dispensed with upon the trial of this action, and that this stipulation and/or his affidavit and the photostatic copy of the confirmation of the Liechtenstein Government annexed thereto may be offered in evidence or used by either party in lieu of such testimony, without said stipulation, however, constituting any waiver by the defendant of its right to object to the admissibility of said testimony.

DATED: November 24, 1948.

UEBERSEE FINANZ-KORPORATION, A. G.

By WALTER E. GALLAGHER
Walter E. Gallagher, Attorney

TOM C. CLARK, Attorney General, as successor to the Alien Property Custodian

By DAVID L. BAZELON
David L. Bazelon
Assistant Attorney General
Director, Office of Alien Property
Department of Justice

(Seal)

Affidavit

I, the undersigned Dr. Josef Henggeler, attorney at law, member of the bar of Zurich, with offices at Löwenstrasse 1; Zurich, Switzerland hereby make oath and say as follows:

I have been for more than 5 years legal adviser of Mr. Fritz von Opel in respect of his business affairs in Switzerland.

Mr. von Opel has during the years since the outbreak of the war repeatedly asked my advice with regard to obtaining the Swiss nationality. He explained to me that he and his wife wished to renounce their German nationality as they did not approve at all of the political development in Germany. He also stated that he did not have financial interests in Germany anymore and that the overwhelming part of his means was invested in the United States.

I had to point out to Mr. von Opel that in view of acquiring the Swiss nationality he was unable to comply with the legal requirements although having been domiciled in St. Moritz, Switzerland, for many years. For, according to the Swiss Federal Act on the acquisition of the Swiss citizenship of June 25, 1903 / June 26, 1920 article 2, the right to acquire the Swiss nationality will only be granted to an applicant who during the last 12 years has uninter-

ruptedly resided in Switzerland for at least 6 years. Furthermore the applicant must have stayed in Switzerland two years without interruption before the date of the application. Mr. von Opel could not comply with these requirements as he had been periodically compelled to leave Switzerland for business matters especially for his affairs in the United States. At the same time I drew the attention of Mr. von Opel to the fact that he had the possibility to acquire the citizenship of the Principality of Liechtenstein and I also informed him that the Principality of Liechtenstein keeps very close relations with Switzerland, f.i. the two countries form a customs union, a treaty to that effect having been concluded between the two states on March 29, 1923. Switzerland has also been charged by the Principality of Liechtenstein with the diplomatic representation of its interests and with the protection of its citizens abroad. The citizens of the Principality of Liechtenstein may therefore call upon the Swiss diplomatic representatives or the Swiss consular service for help which is given to them in the same manner as to a Swiss citizen if the government of the Principality brings forward a corresponding proposition to the Swiss government.

After the outbreak of the war, Mr. von Opel came to consult me again in this matter and repeated to me that he did not approve at all of the political attitude of Germany. The war having broken out he wished to renounce his German nationality under any circumstances and he stated that he would never do any military service for Germany. He then also told me again that the greatest part of his property was invested in the United States and that he therefore felt compelled to leave as quickly as possible for the United States. On the one side he did not in the least want to go to the United States as a German citizen, on the other side he wished absolutely to leave for the United States.

I then told Mr. von Opel that there was no other possibility for him than to apply for the citizenship of the

Principality of Liechtenstein and I advised him to undertake the necessary steps. Mr. von Opel agreed with me.

Therefore I got in touch with Dr. Ludwig Marxer, barrister at law in Vaduz, Liechtenstein, a former member of the government of the Principality. I have known Dr. Marxer for years as a perfectly trustworthy lawyer and I have always associated him with me in legal cases involving Liechtenstein law.

The naturalization took place in complete agreement with the law of Liechtenstein and was completed on November 21, 1939 as indicated on the annexed statement from the Liechtenstein Government dated April 8, 1947.

I remember clearly that Mr. von Opel was very satisfied after the naturalization. He mentioned to me that with the extinguishment of his German nationality he felt freed from a burden which had weighed heavily on his mind. He was very glad that, now a citizen of a free and democratic country, he could leave for the United States.

Zurich, September 2, 1948.

(Signed) Josef Henggeler
(Dr. Josef Henggeler)

(Notarial Stamp)

Legalization.

Seen for legalization of the above signature given by Mr. Dr. Josef Henggeler, lawyer, at Zürich, Löwenstrasse 1.

Zürich, this 3rd day of September 1948.
No. (illegible) Fr. 3.—

Notariat Zürich (Altstadt)
(signature illegible)
Notary Public

Government of the Principality of Liechtenstein

Nr. .....

Confirmation

It is hereby certified that Mr. Fritz von Opel, born May 4, 1899, upon his application, on November 21, 1939, was made a citizen of the Liechtenstein State and thereby became a member of the community of Planken. It is the opinion of the Government that, pursuant to Section 25 of the Act of July 22, 1913 governing Citizenship in the Reich and the German States, Mr. von Opel lost German citizenship, since, at the time of naturalization and several years prior thereto, he resided abroad.

Vaduz, April 8, 1947.

Official Seal and State Tax

Government of the Principality:

(Signatures Illegible)

Official Seal

Plaintiff's Exhibit 50

(CABLEGRAM)

(Stamp)
Office of General Counsel
Sep 17 1931

XP1934 RW2.
ANTWERP 29 16TH

NLT JOHN THOMAS SMITH VICE PRESIDENT
GENERALMEX NY

GEHEIMRAT WANTS TO CONTACT WITH YOU PLEASE CABLE IF AND WHEN YOU WILL COME EUROPE REGARDS FRITZ VON OPEL GECONAN-VER ANTWERP

Plaintiff's Exhibit 51

(TELEGRAM)

(9/21/31)

FRITZ VON OPEL
GECONANVER
ANTWERP

EXPECT TO BE IN EUROPE LATTER PART OCTOBER

JOHN THOMAS SMITH

Plaintiff's Exhibit 52

(CABLEGRAM)

(Stamp)
Office of General Counsel
Oct 5 1931

N73 39 Cable—Ruesselsheim 1700 Oct 5 1931

JOHN THOMAS SMITH—

GENERAL MEX—NEW YORK HON THOMAS SMITH GENL MOTOR EXPORT CO 1775 BROADWAY R1717)

ARE YOU AVAILABLE FOR INTERVIEW IN PERSONAL MATTER IN NEW YORK ON OCTOBER THIRTEENTH? IF SO MYSELF OR MY SON INTEND SAILING WEDNESDAY FOR NEW YORK STOP CABLE REPLY WILL OBLIGE KIND REGARDS—

WILHELM VON OPEL

Plaintiff's Exhibit 53

(TELEGRAM)

(10/5/31)

WILHELM VON OPEL
RUESSELSHEIM
GERMANY

EXPECT TO BE HERE THE THIRTEENTH SAILING EUROPA FIFTEENTH RUESSELSHEIM ABOUT TWENTYSIXTH KIND REGARDS

JOHN THOMAS SMITH

Plaintiff's Exhibit 54

(RADIOGRAM)

NEW YORK,
OCT. 13TH 1931
OCT. 12 HOLIDAY

FRITZ VON OPEL
RADIO VIA S.S. EUROPA N CHATHAM

WANT TO DISCUSS WITH YOU TOMORROW AFTERNOON IMMEDIATELY AFTER STEAMERS ARRIVAL CONFIDENTIAL MATTER CONCERNING AGREEMENT WITH GENERAL MOTORS

FRITZ VON OPEL

Plaintiff's Exhibit 56

(COPY OF LETTER ON
NATIONAL CITY BANK LETTERHEAD)

October 19, 1931

The National City Bank of New York,
55 Wall Street,
New York, N. Y.

Gentlemen:

With reference to the letter addressed to you under date of April 11, 1929, signed by my father, Dr. Wilhelm v. Opel, in which letter you are instructed to deliver six hundred (600) shares of the capital stock of Adam Opel Aktiengesellschaft, of the par value of 10,000 Reichsmarks a share, to General Motors Corporation upon the receipt from General Motors Corporation of the prices for the stock stated in said letter, I now request that you deliver the six hundred (600) shares to General Motors Corporation free and clear, without receiving from General Motors Corporation the payments specified.

I request you to do this under the terms of the power of attorney from my father appointing me his attorney in regard to this matter, which power of attorney you have in your files.

Yours very truly,

(Signed) FRITZ VON OPEL

Plaintiff's Exhibit 57

October 19, 1931.

Mr. E. F. Regan,
Ass't Vice President,
National City Bank,
55 Wall Street,
New York City.

Dear Sir:

This will confirm my introduction to you today of my friend Fritz von Opel, of Wiesbaden, Germany. At the present time he is here representing his father, Wilhelm von Opel, in connection with a transaction between his father and General Motors Corporation involving stock of the Adam Opel Aktiengesellschaft deposited with you under an agreement dated April 11, 1929.

Mr. Opel's signature is appended and I am very glad to verify it as authentic.

Yours very truly,

General Counsel.

JTS:Hr

(signed)
FRITZ VON OPEL.

Plaintiff's Exhibit 58

Abschrift.

Copy

October 20, 1931.

General Motors Corporation,
1775 Broadway,
New York City.

Dear Sirs:

Supplementing my letter of today, you are hereby further authorized to purchase for my account 9,532 shares additional of General Motors Common Stock at $24. a share, amounting in the aggregate to $228,768.

This amount is to be deducted from the purchase price of the stock of the Adam Opel Aktiengesellschaft delivered to you under the agreement.

The Opel stock to be taken in at $6,095. a share.

Very truly yours,

WILHELM VON OPEL
By: FRITZ v. OPEL
Attorney in fact.

Plaintiff's Exhibit 59

October 20, 1931

GJK

BY HAND

General Motors Corporation
1775 Broadway
New York, New York

Gentlemen: *Mr. John Thomas Smith, Vice President*

In accordance with instructions received from Mr. Fritz Von Opel, acting under Power of Attorney for Mr. Wilhelm

Von Opel, we are handing you herewith for account of the latter 600 shares of Adam Opel Aktiengesellschaft represented by certificates Nos. 1/100, 101/200, 201/300, 301/400, 401/500 and 501/600 of the par value of Rms. 10,000 each.

Kindly acknowledge receipt on the attached copy of this letter.

Very truly yours,

GEO. J. KENNY

G. J. Kenny
Assistant Trust Officer

GJK:MCD

Oct. 20, 1931

Receipt is hereby acknowledged of the securities mentioned above.

JOHN T. SMITH

Vice President
OFFICIAL DESIGNATION

Plaintiff's Exhibit 60

October 20, 1931.

General Motors Corporation,
1775 Broadway,
New York City.

Dear Sirs:

Supplementing my letter to you of October 17, 1931, you are further authorized to purchase for my account

General Motors Common Stock at $24. a share, or better, up to $304,750.

Payment for these additional shares is to be made by delivery to you of 50 shares of the stock of the Adam Opel Aktiengesellschaft.

Yours very truly,

WILHELM VON OPEL.

By:

(signed) FRITZ VON OPEL.
Fritz von Opel.
Attorney in Fact.

Plaintiff's Exhibit 61

October 20, 1931.

General Motors Corporation,
1775 Broadway,
New York City.

Dear Sirs:

Supplementing my letter of today, you are hereby further authorized to purchase for my account 9,532 shares additional of General Motors Common Stock at $24. a share, amounting in the aggregate to $228,768.

This amount is to be deducted from the purchase price of the stock of the Adam Opel Aktiengesellschaft delivered to you under the agreement.

The Opel stock to be taken in at $6,095. a share.

Very truly yours,

WILHELM VON OPEL.

By:

(signed) FRITZ VON OPEL.
Fritz von Opel.
Attorney in Fact.

Plaintiff's Exhibit 62

(LETTERHEAD OF J. P. MORGAN & CO.)

New York, October 20, 1931.

PRIVATE AND CONFIDENTIAL.

Wilhelm Von Opel, Esq.,
c/o J. T. Smith, Esq.,
General Motors Corporation,
1775 Broadway,
New York City.

Dear Sir:

As arranged today with Mr. J. T. Smith, we confirm sales to you of 47,625 shares of General Motors Corporation Common stock at $24.00 per share.

Delivery of this stock will be made at our office in New York City against payment in New York funds on or before October 30, 1931.

Very truly yours,

J. P. MORGAN & Co.

Plaintiff's Exhibit 64

October 22, 1931.

Dr. Fritz von Opel,
The Plaza Hotel,
Fifth Avenue at 59th Street,
New York City.

Dear Fritz:

Pursuant to your instructions I today delivered the check of General Motors Corporation to J. P. Morgan & Co., for

$1,143,000.00 to cover the purchase of 47,625 shares of General Motors Common Stock at $24. a share.

I further directed that the certificates be placed in the name of King & Company, 22 William Street, nominees of the City Bank Farmers Trust Company, as directed in their letter to me dated October 20, 1931.

As soon as the certificates go through transfer they are to be delivered by J. P. Morgan & Co. to the National City Bank for the account of your father, Wilhelm von Opel.

Very truly yours,

General Counsel.

JTS:Hr

Plaintiff's Exhibit 65

Abschrift.

Copy.

October 23, 1931.

Mr. John T. Smith, General Counsel,
General Motors Corporation,
1775 Broadway,
New York City.

Dear Mr. Smith:

I beg to acknowledge receipt of your communication of the 22nd, notifying me that on behalf of my father you have paid to Morgan & Co., the sum of $1,143,000.00 to cover the purchase of 47,625 shares of General Motors Common Stock, certificates for which, in the name of King & Company, will in due course be delivered to my father's credit.

to the National City Bank for the account of my father, Wilhelm von Opel.

If agreeable to you, I wish that the amounts so paid should be averaged over the deliveries to be made from November 16, 1931, up to and including November 21, 1931.

Yours very truly,

(signed) FRITZ v. OPEL.

Fritz von Opel.

Plaintiff's Exhibit 66

October 28, 1931

The National City Bank,
New York, N. Y.

Attention—*Mr. Regan, Asst. Vice-President*

Gentlemen,

This letter will authorize you to deliver any securities or cash that you are now holding, or may hold in the future, for my account to the City Bank Farmers Trust Company for account of Fritz von Opel.

Very truly yours,

WILHELM VON OPEL

by (Signed) FRITZ v. OPEL,
Atty. in fact

Plaintiff's Exhibit 68

Transcript of Account:

Geheimrat Wilhelm Von Opel—Russelsheim, Germany
with National City Bank—Head Office—Foreign Books
from November 18 to 24, 1931

Date 1931		Debit	Credit	Balance
Nov. 18	Deposit by Gen'l. Motors Corp. N.Y. Value date 11/17		432,116.49	432,116.49
Nov. 18	Trf. to C.B.F.T. Co. N.Y. for account of Fritz Von Opel letter 10/28/31 from Fritz Von Opel atty. in fact	431,843.23		
Nov. 18	Dep. by Gen'l. Motors Corp.		431,843.23	
Nov. 18	Trf. to C.B.F.T. Co. N.Y. for account of Fritz Von Opel letter 10/28/31 from Fritz Von Opel atty. in fact	432,116.49		-0-
Nov. 19	Dept. by Gen'l. Motors Corp. N.Y.		432,480.84	
Nov. 19	Trf. to C.B.F.T. Co. N.Y. for account Fritz Von Opel letter 10/28/31 from Fritz Von Opel atty. in fact	432,480.84		-0-
Nov. 20	Dep. by Gen'l. Motors Corp. N. Y.		432,845.19	

Date 1931		Debit	Credit	Balance
Nov. 20	Trf. to C.B.F.T. Co. N.Y. for account Fritz Von Opel letter 10/28/31 from Fritz Von Opel atty. in fact	432,845.19		-0-
Nov. 21	Dept. by Gen'l. Motors Corp. N.Y.		432,936.27	
Nov. 21	Trf. to C.B.F.T. Co. for account Fritz Von Opel letter 10/28/31 from Fritz Von Opel atty. in fact	432,936.27		-0-
Nov. 24	Dept. by Gen'l. Motors Corp. N.Y.		432,526.62	
Nov. 24	Trf. to C.B.F.T. Co. N.Y. for account Fritz Von Opel letter 10/28/31 from Fritz Von Opel atty. in fact	432,526.62		-0-

Account Closed November 24, 1931

Plaintiff's Exhibit 69

October 30, 1931

Mr. T. M. Godwin, Asst. Trust Officer

On the account of Wilhelm Von Opel we are not to send anything to Mr. Wilhelm Von Opel in Germany until further advised.

(Signed) H. D. SAMMIS

H. D. Sammis,
Vice President.

Plaintiff's Exhibit 70

CUSTODIAN ACCOUNT AUDIT SHEET

November 6, 1931

ADDRESS FILES — INITIAL (Illegible)

11/9/31

Trust Number C15599

Title of account Fritz von Opel, Main A/C

Address Rupenhorn 11,
Berlin-Spandau,
Germany

Special instructions

CASH BOOKKEEPING DEPARTMENT — INITIAL W. FISCHER

Remittance instructions Transfer 1/5th of balance in Main income a/c to a custodian income a/c Fritz von Opel, Special A/C (15630), and 4/5ths of balance to custodian principal Fritz von Opel, Main A/C, monthly on the 6th. Statements in duplicate at time of making transfers: Originals to Fritz von Opel, duplicates to Wilhelm von Opel. Statements of principal a/c in triplicate each month same time as income statements: Original to Fritz von Opel, duplicate to Wilhelm von Opel, third copy to Messrs. Bayer & Clauson CPA's.

Income instructions Custodian Income No Advice

Principal instructions Custodian Principal Also a Custodian Income Special a/c #15630.

SECURITY RECORDS DEPARTMENT — INITIAL (Illegible)

Statements

Proxies are to be destroyed

Registration of securities Nominee

Fee $1. per $1,000. for 1st Million, 50¢ per $1,000. on balance. $50. per annum minimum

Income instructions Custodian Income No advice

Principal instructions Custodian Principal

INCOME TAX DEPARTMENT — INITIAL H. W. BORG

Are we to make return ☐ Yes ☒ No

Are we to furnish figures ☐ Yes ☒ No

Except as Required by law

Citizen of Germany

Legal residence (State) Belgium

Single without dependents ☐

Single supporting relative ☐

Married and living with husband or wife ☒

COLLECTION DEPARTMENT — INITIAL (Illegible)

Citizen of Germany

Income instructions Custodian Income No advice

Principal instructions Custodian Principal

Officer in charge (Illegible)

Clerk in charge B. D. Shapiro

Dept. head approval for filing

Date Oct. 19, 1931

City Bank Farmers Trust Company,
22 William Street,
New York, N. Y.

Gentlemen:

With reference to the securities which you are now holding or may hold at any time for my account, I desire to give you the following instructions:

All interest and dividends on such securities are to be collected by you and disposed of as follows—

☐ Credited to my checking account at the National City Bank of New York (Cstdn. Account Income Branch) under advice.

☐ Remitted periodically by check to the order of.....

.....

mailed to .....

☐ Held subject to my instructions.

Proceeds of sales of securities and other cash principal items are to be credited to my ☒ Custodian Principal Account ☐ Checking Account pending reinvestment.

NOTE:

I hereby authorize and empower you, in my behalf and in my name, to sign any certificates of ownership or other certificates which are or may hereafter be required by any regulations of the Internal Revenue Department or other authority of the United States, relating to Income Tax, so far as the same are required in connection with any bonds and the collection of coupons thereon or any interest upon mortgages or deeds of trust or other similar obligations of corporations, joint stock companies or associations and insurance companies which are now or may hereafter be in your possession belonging to me, or in connection with the

collection of coupons, checks or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations and insurance companies engaged in business in foreign countries, claiming no exemptions in my behalf.

To enable you to execute these certificates properly, I hereby declare as follows:

I am a citizen of Germany

My legal residence is (State or Country) Belgium

I am ☐ single, without dependents. ☐ Single and supporting a relative. ☒ Married and living with husband or wife.

*NOTE:

I hereby agree to notify you promptly in writing in case I should change my citizenship, legal residence or status as stated above.

You are to charge for your services a fee of 1/10 of 1% per annum on the par value of securities held (minimum fee, $50 per annum) payable semi-annually, and I authorize you to charge my account with the amount of such fee, with advice to me.

For preparing annual statements of income classified for income tax purposes, including profits and losses on security transactions, you are to make a charge based on the amount of actual work involved, the minimum charge to be $10.00.†

I ☐ desire ☒ do not desire this service.

*NOTE:

† It is understood that in the case of non-resident alien clients this charge shall be made to cover the expense of furnishing annual income returns required by law.

Proxies are to be ☐ forwarded ☒ destroyed.

Securities herein referred to are to be held by you in ☐ negotiable form ☒ name of your nominee ☐ non-negotiable form.

NOTE:

Address

Yours very truly,

(Signed) FRITZ v. OPEL

Berlin-Spandau
Rupenhorn 11
Germany
Fritz von Opel (Main a/c)

NOTE:

Please indicate by checking relative squares and striking out superfluous parts.

SPECIAL INSTRUCTIONS

On the 6th day of each month transfer 20% of Income collected to Fritz von Opel—Special (a/c) (Illegible) with advice to him & 80% to Principal Main a/c. Duplicate statements of Main a/c to go to Wilhelm von Opel—Wiesbaden—Steubenstrasse 34.

(The form below is to be signed only when it is desired to delegate to a third party authority over this account.)

I hereby authorize and request you to follow any and all written instructions, given you by Wilhelm von Opel (Illegible) of (Illegible) in respect to the sale or exchange or other disposition of any or all of the securities which you, as Custodian or otherwise, now or in the future may hold for my account, the transfer, delivery or other disposition of said securities, the investment of any cash which you, as custodian or otherwise, may at any time hold for my account, and

the purchase or acquisition by exchange or otherwise, of securities in my behalf, hereby granting unto my said attorney full power and authority in the premises, ratifying and confirming all that he shall do or cause to be done by virtue hereof.

Very truly yours,

FRITZ v. OPEL

Plaintiff's Exhibit 71

MEMORANDUM November 17, 1931

Miss Cantrell
Remittance Department.

I recently gave you instructions to prepare principal statements of the Fritz von Opel Account in triplicate. Will you please note the following amended instructions:

> Statements of the principal account of Fritz von Opel's Main Account are to be prepared in duplicate only, originals going to Mr. Fritz von Opel and duplicates to Mr. Wilhelm von Opel. The triplicate copy of this statement will not be sent to Messrs. Bayer & Clauson, as I had previously instructed.

We have opened another account, however, called "Fritz von Opel Special Account, re: General Motors Stocks" and it is this account that I wish statements made up on in triplicate at the same time as all the other statements are made. Originals of this statement are to go to Mr. Fritz von Opel, duplicates to Mr. Wilhelm von Opel and triplicates to Messrs. Bayer & Clauson.

Please note that the instructions given apply only to the principal statements and do not affect instructions on the Income Statements which were previously given to you.

/s/ B. D. SHAPIRO
B. D. Shapiro
Custodian Administration

BDS/GB

Plaintiff's Exhibit 72

May 31, 1932

City Bank Farmers Trust Company,
22 William Street,
New York, N. Y.

Gentlemen:

I hereby direct you to transfer to a custodian account which you will open in the name of Ueberseeische Finanz Korporation, Ltd., all the cash and securities now held by you in my main principal and income account, with the exception of 47,625 shares General Motors Corporation stock which is to remain in my account subject to my further instructions.

My special income account will remain open and is not to be transferred.

Very truly yours,

/s/ FRITZ VON OPEL

Plaintiff's Exhibit 73

(LETTERHEAD OF OVERSEAS FINANCE CORPORATION LIMITED)

Zurich den May 9th, 1932.

City Bank Farmers Trust Company,
22, William Street,
New York City.

Gentlemen:

We hereby request you to open an account in our name. As per attached Power of Attorney, Mr. Fritz von Opel is authorized to handle this account.

Very truly yours,

OVERSEAS FINANCE CORPORATION LIMITED.
(Signatures Illegible)

Legalization

Seen for legalization of the above two signatures of Messrs. dr. Josef Henggeler, advocate at Zurich and dr. Hanns Frankenberg, banker residing at Zurich 7, acting as counsels of administration of the Overseas Finance Corporation Limited at Zurich with the right to sign valid in law for the said corporation.

Zurich, the 11th May 1932.

Notariat Zürich (Altstadt)
(Signature Illegible)

tax: frs. 4.–
Nos. 3585/6.

Plaintiff's Exhibit 74

(Letterhead of Overseas Finance Corporation Limited)

POWER OF ATTORNEY

Gentlemen:

We hereby authorize and request you to follow any and all written instructions, given you by Mr. Fritz von Opel in respect to the sale or exchange of any or all of the securities which you, as Custodian or otherwise, now or in the future may hold for our account, the transfer, delivery or other disposition of said securities, the investment or other disposition of any cash which you, as custodian or otherwise, may at any time hold for our account, and the purchase or acquisition by exchange or otherwise, of securities in our behalf, hereby granting unto our said attorney full power and authority in the premises, ratifying and confirming all that he shall do or cause to be done by virtue hereof.

Very truly yours,

Overseas Finance Corporation Limited
(Signed) Illegible

Zurich, May 9th 1932.

Seen for legalization of the above two signatures of Messrs. dr. JOSEPH HENGGELER, advocate at Zurich and dr. HANNS FRANKENBERG, banker residing at Zurich 7, acting as counsels of administration of the OVERSEAS FINANCE CORPORATION LIMITED at ZURICH with the right to sign valid in law for the said corporation.

Notariat Zürich (Altstadt)
(Signed) Illegible

ZURICH, the 11th May 1932.

tax: fr. 4.—
No: 3582/3.

(NOTARIAL SEAL)

Plaintiff's Exhibit 75

(*Stamp*)
FILED
Oct. 5 1948
HARRY M. HULL, Clerk

May 31, 1932.

City Bank Farmers Trust Company,
22 William Street,
New York, N.Y.

Gentlemen:

We hand you herewith a form duly executed setting forth the instructions by which you are to be guided in operating our custodian account with you.

We have already filed with you properly legalized documents showing the names of the officers authorized to sign against this account and a power of attorney issued in the favor of Mr. Fritz von Opel. We understand you wish further properly legalized documents showing the authority of the officers to delegate their powers as they have done in said power of attorney and these will be furnished you in due course. In the meantime we have requested Credit

Suisse, Zurich, to confirm to you that the officers have such powers. We understand this confirmation is now in your hands and that you are willing to recognize Mr. von Opel's authority as set forth in said power of attorney for a temporary period, that is, for such reasonable length of time as may be necessary for us to furnish you with supporting documents.

With reference to the income collected by you for our account, you are hereby directed to credit 20% thereof to the special income account of Mr. Fritz von Opel. The amount so credited to the special account is to cover management expenses incurred by Mr. von Opel.

Very truly yours,

UEBERSEEISCHE FINANZ KORPORATION, LTD.

By: (Signed) FRITZ v. OPEL, Atty.

Plaintiff's Exhibit 76

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 26453.

UEBERSEE FINANZ-KORPORATION, A. G.,

Plaintiff,

v.

TOM C. CLARK, Attorney General, As Successor to the Alien Property Custodian,

Defendant.

STIPULATION

IT IS HEREBY STIPULATED between the parties that Mr. Adolf Gaeng, Wunderlistr. 8, Zurich 37, Switzerland, if

called as a witness for the Plaintiff, would testify as follows:

1. That on October 19, 1948, he forwarded to the offices of Gallagher, Osherman, Connor and Butler, Bowen Building, Washington, D. C., all the existing books, files and papers of the Uebersee Finanz-Korporation, which were kept in the regular course of business and which cover the years January 1, 1937 through December 31, 1942, and that there are no other books of said corporation covering this period of time;

2. That these books, files and papers are more specifically identified by the descriptions contained in the attached memorandum which was an enclosure with his letter of October 19, 1948;

3. IT IS FURTHER STIPULATED between the parties that said books, files and papers described in the attached memorandum were received at the offices of Gallagher, Osherman, Connor and Butler, Bowen Building, Washington, D. C., and the same have been made available to Counsel for the Defendant pursuant to the Order of the United States District Court of the District of Columbia under date of October 5, 1948.

4. IT IS FURTHER STIPULATED that the testimony of Mr. Adolf Gaeng may be dispensed with upon the trial of this action, and that this stipulation may be offered in evidence or used by either party in lieu of such testimony.

(Translated from a photostat of the German original)

1/S7534

Declaration of Incorporation

In pursuance of the above articles of incorporation I acting as sole incorporator herewith establish the

Frima Trust Establishment with domicile in Vaduz and within the terms of Article 2 of the Articles of Incorporation I assigned it:

Francs 20,000 (Francs twenty thousand) in cash.

As Board of Management I appoint:

Mr. Ad. Gaeng, Auditor, Zurich, who is authorized to sign on behalf of the company.

The assets assigned to the fund have been made available to it in full and are being credited to its account with Adler & Company, A. G., Zurich.

Vaduz, September 5, 1934.

The Administrator Officer will sign as follows:

Frima Verwaltungsanstalt

Frima Etablissement de Gestion

Frima Trust Establishment

(signature) Ad. Gaeng

I herewith certify to the genuineness of the above signature which was acknowledged in my presence by Adolf Gaeng, Auditor residing at Rosengartenstrasse 59 in Zurich 10, who identified himself by presenting his passport.

Zurich 6, September 10, 1934.
Control No. 1245
Francs 2.00 Official Fee.

Notarial Offices
Unterstrasse Zurich
(Signature illegible)
Notary

(Official Seal)

(Translated from a photostat of the German original)

I/G7584

Articles of Incorporation

of

Frima Verwaltungsanstalt

Etablissement de Gestion Frima

Frima Trust Establishement

1. There exists under the name of Frima Verwaltungsanstalt, Etablissement de Gestion Frima, Frima Trust Establishement with domicile in Vaduz, an establishment within the terms of Articles 534 *et seq.* of the Liechtenstein Civil Code for the purposes of managing the assets of the establishment and to use them in accordance with the Articles of Incorporation and for the purpose of conducting commercial transactions.

2. The capital of the establishment consists of Francs 20,000 which upon its incorporation are assigned to the establishment in cash. Further increments to the capital may be made at any time.

3. The establishment and its profits, if any, belong to the beneficiaries to be designated by the incorporator either generally or for any particular instance. The beneficiaries thus designated are authorized to reassign their rights to others. Designation of the original beneficiaries and their assignees may be made irrevocably or revocably.

4. The establishment shall be managed by a Board of Management which is composed of one to five individuals or corporate bodies. The Board of Management shall be designated by the incorporator. Subsequently, it shall be

self perpetuating; successors may be appointed by the several members during their own tenure to become effective upon termination of their own offices.

5. Notwithstanding these provisions, the beneficiaries shall at any time have the right to appoint or discharge the members of the Board of Management. The appointments made pursuant to Article 4 shall therefore be valid only as long as the beneficiaries do not make contrary decisions. If there shall be several beneficiaries, a majority of them shall be required for discharging a member of the Board of Management. A decision may be arrived at by a meeting called for such purpose or by signing a proposal in writing to that effect circulated among the beneficiaries.

6. The Board of Management determines the manner in which the signature of the establishment are executed. Those authorized to sign add their own name to that of the style of the establishment.

The Board of Management may appoint an auditing agency.

7. The balance sheet shall be drawn up in accordance with established business principles. At the discretion of the Board of Management, a surplus may either be distributed among the beneficiaries or retained in some form, such as reserves.

8. Amendments of the present Articles of Incorporation shall be made only with the consent of the Board of Management and the beneficiaries. The beneficiaries are herewith designated as the supreme agency (organ) of the company.

9. Notices, if any, of the establishment shall be given by a registered letter to the beneficiaries; if a public notice

shall be required, publication shall be made by one or two newspapers published in Liechtenstein.

Vaduz, September 5, 1934

(Signature) Ad. Gaeng

(Translated from a photostat of the German original)

I/88534

Designation of Beneficiaries

In accordance with Article 3 of the Articles of Incorporation of the Firm

F r i m a Trust Establishment, Vaduz

registered in Vaduz, the incorporator of the establishment in his capacity as such is authorized to designate the beneficiaries.

I herewith irrevocably designate as beneficiary;

Mr. Fritz von Opel, Graduate Engineer, Briarcliff (New York), giving him expressly the authority to re-assign his right at any time revocably or irrevocably, wholly or in part.

At the same time I assign in the same manner all rights vested in the incorporator by law to Mr. Fritz von Opel.

Zurich, September, 1934

(Signature) Ad. Gaeng

I herewith certify to the genuineness of the above signature which was acknowledged in my presence by Adolf

Gaeng, Auditor, residing at Rosengartenstrasse 59 Zurich 10, who identified himself by presenting his passport.

Zurich 6, September 10, 1934
Control No. 1246
Francs 2.00 Official Fee.

Notarial Offices
Unterstrasse Zurich
(Signature illegible)
Notary

(Official Seal)

Plaintiff's Exhibit 78

SCHWEIZERISCHE BANKGESELLSCHAFT

Union Bank of Switzerland

Board of Directors

Zurich June 25, 1936

FRIMA FIRST ESTABLISHMENT—

VADUZ

You refer to the agreement made between you and us on June 19, 1936 and we are honored to tell you that we have executed your order and sold—

97 Shares OVERSEAS FINANCE CORPORATION, Zurich
Par Value 5,000

for a price of U. S. Dollars 1,666.66 per share under the following agreement said before hand to the following:

Buyers	Number	Value
Herrn Direktor C. Buhler, Zurich	6	$ 9,999.96
Adler & Co. A-G., Banquiers, Zurich	9	14,999.94
Credit Industrial, Clarus	5	8,333.30
Herrn Direktor H. Gruebler, Zurich	9	14,999.94

Bank in Winterthur, Winterthur	8	13,333.28
Herrn Direktor M. Zimmermann, Zurich	6	9,999.96
" " F. Zehnder, Zurich	7	11,666.62
" " F. Richner, Zollikon	4	6,666.64
" A. Lang, Zurich	2	3,333.32
" Direktor E. Baechi, Zurich	6	9,999.96
" " P. Jaberg, Zurich	7	11,666.62
" Dr. H. Weiss, Zollikon	5	8,333.30
" Dr. L. Birchler, Zollikon	4	6,666.64
" G. A. Keller, Zurich	4	6,666.64
" Dr. A. Schaefer, Zurich	6	9,999.96
" Direktor Dr. E. Lang, Baden	5	8,333.30
" Hans Keller, Ober-Engstringen	4	6,666.64
Total	97	161,666.02

This total amount has been credited to your value June 30, 1936 on a new U. S. dollar account that we have opened under your name on our books. We reserve for us the right to charge you later for the Federal and State Sales Tax on the sale of these shares.

It is understood that the amount as said above will be blocked temporarily following the agreement made between you and us on June 19 of this year and that it is pledged for our claims until a definite new agreement has been made in accordance with the Supplement B of the agreement as said before hand.

Sincerely,

UNION BANK OF SWITZERLAND

(Two Signatures)

Plaintiff's Exhibit 79

Adler and Company, Bankers, Inc.

Zurich 1,
St. Peter Street 16
Post Office Box 22

STATEMENT

We notify herewith that we received from *Frima Trust Establishment, Vaduz*

on May 30, 1936

97 shares of Overseas Finance Corporation, Ltd. in deposit. These shares have been delivered to the Union Bank, of Switzerland on June 22, 1936. The same bank give us the shares back on November 4, 1941 and since that time they have been on deposit without interruption for the account of Frima Trust Establishment, Vaduz.

Adler and Company, Inc.

Dr. E. Meier

Dr. Ludwig Schwager

Legalization of text and signature follows by Public Notary Office of Zurich by the chancery of the State of Zurich by the Public Notary Carl Steidel, by the Chancery of the State of Aargau and by the Consulate General of the United States of America in Zurich (Eugene W. Nabel, Consul of the United States) October 28, 1948.

Plaintiff's Exhibit 80

Adler & Company
Zurich

Deposit Statement

Frima Trust Establishment *Vaduz*

Shares Overseas Finance Corporation, Ltd., Zurich

May 30, 1936	97 shares placed in deposit
June 22, 1936	97 *shares* passed over to Union Bank of Switzerland
November 4, 1941	97 shares back in deposit from Union Bank of Switzerland, Zurich

---

October 19, 1948

Adler & Company, Inc.

Dr. E. Meier

L. Schwager

Legalizations follow of text and of the signature by Public Notary Office of Zurich Oldtown and by the Public Notary of Baden.

COPY

Notification of departure

Pltfs.' #83

The persons named below departed on december 12, 1929 from Wiesbaden, Erardstr. 5 to Detroit Hotel Book Cadillac U.S.A.

number	family name of departing for married women also maiden name	christian name person underline the calling name	profession	date of birth	place of birth	nationality	religion	single married widowed divorced separated	duration of residence	last tax assessment office place
	von Opel	*Fritz* Adam, Hermann	dipl. ing.	may 4, 1899	Rüsselsheim	Hessen	prot.	married	appr. 1-1/2	Mainz
	von Opel	Margot	Ehefrau (wife)	jan. 17, 1903	Potsdam	Hessen	prot.	married	appr. 5	Wiesbaden

stamp: 4th. police district
dec. 19, 1929
Wiesbaden

(Entry-stamp of police district)

Fritz von Opel
Margot von Opel geb. Löwenstein

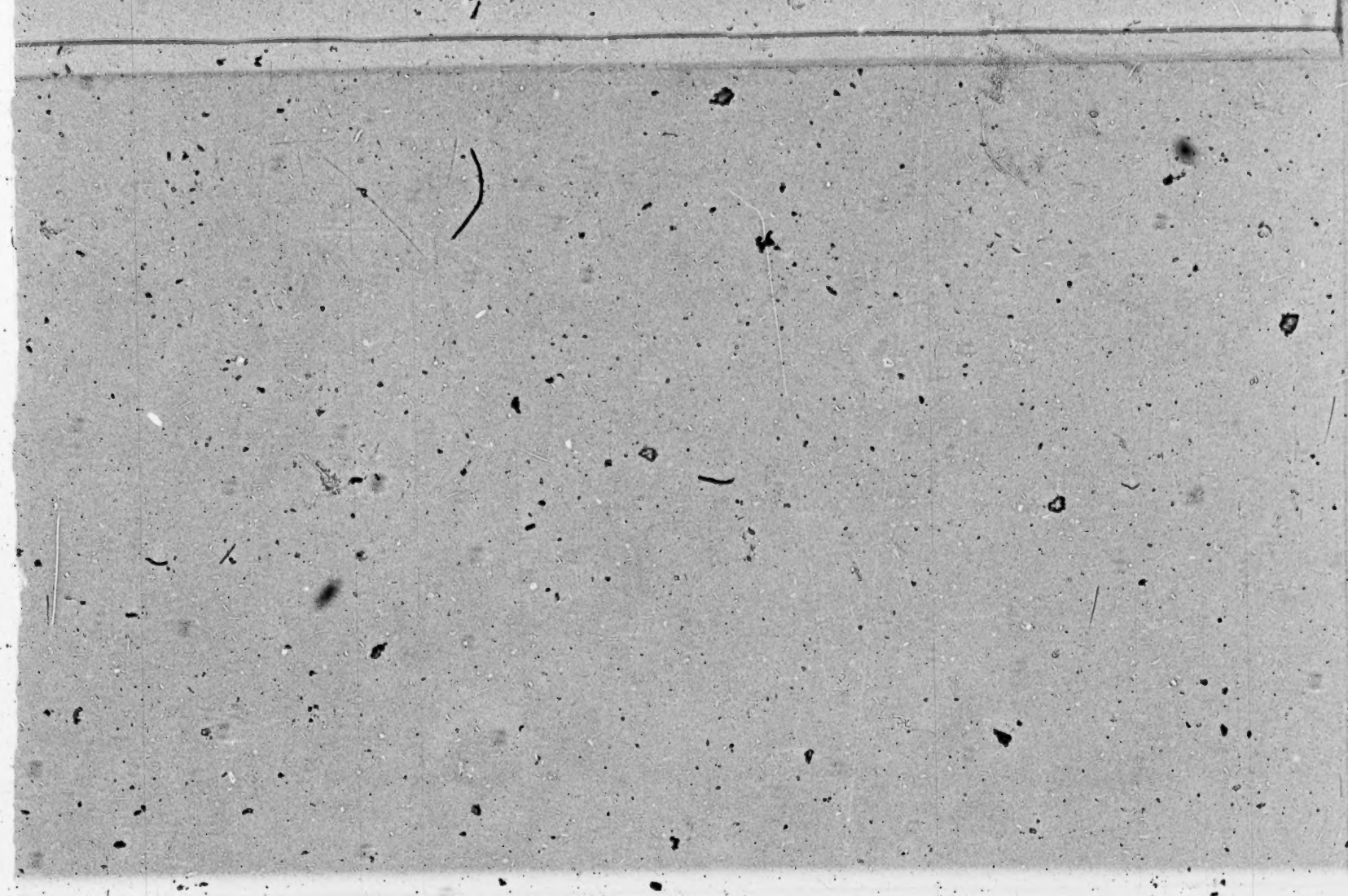
Name and profession of the person in charge to give notification

(stamps and seal)

seal
The over-mayor of Wiesbaden,
police president
first police
district

The undersigned secretary certifies that this copy is correct as to the words and to the figures
Wiesbaden, nov. 9, 1948
first police district
Rupp
police secretary

1884
Plaintiff's Exhibit 83



Plaintiff's Exhibit 90

TRANSDANUBIA BAUXIT R. T. Budapest
TRANSDANUBIA BAUXIT A. G. March 12, 1941

Dear Mr. von Opel:

In the following we would like to give you a short outline of the most recent happenings:

Up to August 1940 we could not begin deliveries for reasons beyond our control. The settlement of the Koranye matters took up a long time and after they had been finished we had no means of transportation at our disposal and we were unable to obtain mine workers on account of the general lack of workers. Finally, in August, we had overcome all difficulties and began deliveries. Immediately after the beginning of deliveries it was visible that the mineral taken from the Edgar mine was of excellent quality; that, however, by means of surface production only little mineral could be produced. As in the meantime considerable increase in wages, transportation fees, and supply prices had happened and as we saw that it was inevitable to go over to the more expensive deep mining, we tried urgently to get into contact with Giulini to obtain a change of prices and stipulations of quality. For a long time we did not receive any answer from Giulini but we continued delivery. We also continued some test drilling in the Edgar mine and through them we found, at depths of 21 to 23 meters, extensive mineral beds of excellent quality. We enclose the respective technical report, which also describes the chances of exportation.

At the end of October, Dr. Edgar Giulini, Director Frick, and an engineer of the firm came to Budapest. Dr. Timar was doing military service during the entire fall and for this reason Engineer Krausz negotiated with these gentlemen. He described to them the situation and explained to

them that the Hungarian National Bank was not going to permit the exportation of bauxite under the originally stipulated conditions on account of the rise in prices which had taken place in the meantime. Giulini, in the beginning, did not want to agree to a change of conditions but, as the National Bank had made known to them that it would not permit exportation under the original conditions, they finally declared their readiness to negotiate new prices and terms. (Terms omitted.)

Thereafter, Giulinis inspected the mine, together with Engineer Krausz; they expressed their satisfaction about all they had seen and they were delighted about the quantity as well as the quality of the mineral to be expected. Already, during the course of the negotiations, we had told them that the beginning of deep mining made investments necessary and we asked them to put at our disposal amounts necessary for the investments, either in the form of an advance or in the form of a loan, because under the present circumstances it was difficult for us to turn to you. Upon our return from the mine to Budapest, Giulinis informed us that the German Foreign Funds Control would not permit either an advance or a loan and that for this reason they would report to you about the inspection and that they would request you to put up the capital necessary for the investments.

A short time thereafter, we were forced to stop production because it would have been necessary to begin deep mining, for which the necessary means were not and are not at our disposal. Since for half a year we can only communicate with you by means of wires and it appears that in this way we would not succeed in convincing you that the beginning of deep mining is absolutely necessary and the sole profitable solution, because exact scientific tests have shown beyond doubt that the mineral is there, and as the contract is in our hands as the prices can be raised with the assistance of the National Bank, according to market prices and

the general situation, all requisites are there for considerable success of our enterprise. Had the necessary capital been at our disposal already three to four months ago we, to our best belief, could have already delivered considerable quantities. Instead, however, we passed the entire winter waiting; our general expenses remained unchanged; we had to carry the public fees undiminishedly, and for this reason it is self-evident that the future of our corporation without productive work can only result in continued heavy losses.

Based upon the telegraphic authorization from you, we began to negotiate with various parties for the purpose of selling or leasing the mine. Taken altogether, we can say about these negotiations the following:

A loan can only be obtained if the creditor, in addition to interest, is given a considerable share of the profits. We are faced with outright fantastic demands which make the solution absolutely not profitable. It is self-evident that the situation would be quite different if we could obtain a guarantee through your Swiss banking connection. In such a case we could obtain a loan at bank terms.

We also obtained an offer for sale in the amount of 280,000 to 300,000 pengo. All interested parties, however, were only inclined to purchase the interest of Transdanubia if Giulinis would be willing to give up their part. Giulinis were not disinclined to accept such a solution, but as the purchasers wished to have a general release in regard to lawsuits and public fees, Giulinis refused to accept these terms because, according to Dr. Ballays' information, their relation with Koranye is not settled. Therefore, only one solution is left—merely to lease the mine in agreement with Giulinis in such a way that the new lessee takes over the stipulated deliveries for Giulini and that they at the same time state to us that they would not raise against us any claims based upon our breaking of the delivery contract. We succeeded, finally, in finding a noble aristocrat who is willing to lease the mine, but he does not want to pay us

more than 1.60 pengo per ton. This would be a very unfavorable solution because in the three years of the lease contract nearly no profit would be left, whereas the lessor in the meantime would take out and deliver from the Edgar mine considerable quantities.

Unfortunately, the prices of all supplies for deep mining have in recent times considerably risen so that, including the general expenses and public fees which accrued in the meantime, 55,000 to 60,000 pengos would be necessary for the beginning of the enterprise. This amount we figured based upon careful—even pessimistic—calculations and we believe that with this amount the production could be really put into such state that premiums would be guaranteed and that not only the invested amount, but in addition, considerable sums could be earned. (List of supplies follows.)

This is how matters stand. In our opinion, only one possible profitable and reasonable solution is existent—namely, by making the necessary investments for the beginning of deep mining and to start deliveries as soon as possible. It cannot be overlooked that we did not fulfill our delivery contract with Giulinis and although we have in this respect many excuses, we must nevertheless face the possibility that if further deliveries happen in the matter Giulinis will revoke the contract and start against us a lawsuit for damages as they are not obliged to share in our investments. Instead of productive work, we would have a long drawn-out and expensive lawsuit which, even if we won, would stop the production because we cannot hope to use the mines under Giulinis' consent during a lawsuit with them.

With the mining facilities all judicial matters are settled and the authorities during the last months were really very helpful in every respect. Also, production went along nicely, payments for the produced mineral were made without difficulties against documents and all hope was there that the enterprise would develop normally and even begin to bloom.

It would be really sad if we would be forced right now to leave the sure profits to third parties.

For this reason we beg you very much to revise your position and to make it possible to maintain the enterprise out of own means. From this letter and enclosures you will see that all conditions are fulfilled to meet the contracts and to let bloom the enterprise. Should you, however, in spite of the above, remain upon the stand taken, namely, not to put at our disposal the amounts necessary for the investments, in this case please permit that we, if worse comes to worst, enter into the above-mentioned lease agreement.

Time presses. The public fees must be paid and general expenses exist to a certain degree. On the other side, we had for months no income whatsoever. Every day which we delay production and delivery means a loss irrespective of the fact that we have no money at all at our disposal to bear the public fees for any length of time. For this reason we ask you to let us know your decision as soon as possible—a decision which we hope will be favorable for the enterprise.

With greatest respect,

TRANSDANUBIA BAUXIT

/s/ KRAUSZ
/s/ DR. TIMAR

Plaintiff's Exhibit 91

(Draft of Telegram)

Timar Balory—utca 5 Budapest

Transdanubia

Letter received. Try to make deal with more competent party under approval by Giulini and on Terragun basis. Cable details before closing.

Opel

Plaintiff's Exhibit 92

(Cablegram)

JE64 RADNYP61 102 WIRELESS VIA MACKAY
RADIO=BUDAPEST 27 1239

NLT OPEL=
244 ARABIANROAD WESTPALMBEACH
FLORIDA= 1941 MAY 27 PM 4 10

TWO POSSIBILITIES FOR SOLUTION ARE OFFERED FIRST COUNT HADIK WILLING TO LEASE MINES FOR FIVE YEARS RENT ONE PENGOES TWENTYFIVE PER TON MAKES ALL INVESTMENTS AND TAKES OVER CONTRACT GIULINI WILL START WITH WORKS AT LATEST TENTH JUNE STOP SECOND WE COULD RAISE A LOAN OF FORTY THOUSAND PENGOES FOR THREE YEARS AT SIX PERCENT STOP GIULINIS FEELING INCLINED TO GIVE AMNESTY FOR THE FAILURE OF DELIVERY IF WE START WITH IT UNTIL FIFTEENTH JULY STOP WE SHALL DO OUR BEST IN ORDER TO CHOOSE THE MOST ADVANTAGEOUS FORM SHOULD FEEL OBLIGED TO HEAR YOUR OPINION=

TRANSDANUBI BAUXIT.

OPEL 244 GIULINI GIULINIS AMNESTY
TRANSDANUBI BAUXIT.

Plaintiff's Exhibit 93

Suggest you accept Hadik offer. He ought to guarantee 40 to 50 thousand tons per year or if lesser guaranteed terragun should be higher.

Suggest accepting Hadik offer provided Giuline agrees to our terragun safeguarded. Hadik ought to guarantee around 40 thousand tons yearly. Try to raise terragun or get a top percentage of profit.

OPEL

Plaintiff's Exhibit 96

Dr. D. Gros
Rechtsanwalt

Berlin-Columbushaus, July 27, 1935.

THE DEED OF GIFT OF OCTOBER 5, 1931.

A critical evaluation of the provisions of the deed of gift leads me to distinguish three groups of agreements namely:

1. The gift;
2. The usufruct;
3. The advancement.

I.

The gift.

In the provisions relating to the gift—these are paragraphs 1 to 4, and 10—distinction must again be made between:

(a) the gift (paragraphs 1-4) and

(b) the "reversion" of the gift (paragraph 10).

Re (a): In making the gift, distinction must again be made between the in personam agreement (the gift promise) and the execution of the gift.

A written gift promise is void according to law. But the lack of formality of the gift promise is remedied by the proper execution of the gift. The deed of gift contains a so-called "cash gift", i.e. a gift in which the promise and the act of donation coincide. In this case the proper execution of the gift, i.e. in this case the transfer of the title is decisive for the validity of this act. The transfer of title is generally effected by "delivery of possession", to the donee the actual power of disposal. However, since the shares in question (p. 2) were deposited in a bank, the delivery was to be replaced, as provided by law specifically for such cases, by the assignment of the claim against the bank for delivery of the shares in accordance with the contract of deposit or bailment. This was done by the provision of paragraph 4 of the deed. Thus, what we have before us is a proper transfer of title, hence a perfectly valid gift.

Re (b): The last paragraph of the contract provides that under certain circumstances, the gift which was executed is to become "void", and that the shares or their substitutes including the unused income are to "revert" to the parents. It was evidently the intent of the contracting parties that these provisions should secure an automatic reversion of the property of the parents. But this effect could have been attained only if the title itself had been transferred conditionally, namely on the "condition subsequent" of the event contemplated in paragraph 10. Legal texts and the decisions, are unanimous in maintaining that the transfer of title on a condition subsequent is permitted and that it has

the effect of an automatic reversion in the event that the condition should occur. It appears doubtful, however, whether the contract may be interpreted liberally to provide that it was the intent of the contradicting parties to make the transfer of the title dependent upon the condition subsequent of the event contemplated in paragraph 10. In my opinion a reasonable interpretation of the contract would lead to this conclusion. It must, however, be remembered that much will depend, in case of dispute, on whether the court takes a formalistic approach or not.

But the fact remains that the subject of the gift—the shares—have been sold, and that with the proceeds of this sale, other assets have been purchased. Paragraph 10 takes this fact into consideration (p. 3) by extending the "reversion" clause of the contract to the "substituted values including the unused income". This provision, however, is undoubtedly imperative to transfer title, since the law of personal and real property which is governed by the publicity principle, calls for unambiguous, clearly defined conditions, because the provisions of the law of real and personal property governing the transfer do not only the legal relations between the contracting parties, but also those of any third party. It must, therefore, be emphasized that the parents in no case reacquire directly the substituted values including the unused income, if the event discussed in paragraph 10 should occur.

An interpretation which takes due consideration of the intent of the contracting parties, must of necessity come to an interpretation of paragraph 10 (so-called supplementing interpretation) which would permit the parents in the case provided for in this paragraph to demand, that the substituted values including the unused income be transferred to them. It is to be noted, however, that the parents do not acquire the title automatically, but that they merely obtain a so-called in personam claim to the transfer of the title. Hence, they will not obtain the title until the prop-

erty assets are assigned to them by special transfers in accordance with the law of personal and real property. It is, of course, a great difference whether the title will revert automatically, or whether there is merely a claim for transfer of title which represents an inferior legal position. An example from the law of bankruptcy may serve to illustrate the practical consequences. There the owner has a right in rem for the delivery of his property, the unsecured claimant, however, must be satisfied with receiving his mere pro rata share as an unsecured creditor.

II.

The usufruct.

The provision regarding the creation of the usufruct was intended to provide as a precaution (p. 4) for the parents. This in rem security has not been achieved, however, for the usufruct as stipulated, is not valid.

The creation of a valid usufruct, according to law, presupposes that the res in which the usufruct is to be created is "delivered" to the usufructuary, or, if the res is deposited with a third party, the actual "delivery" is substituted—as in the case of the transfer of title—by the assignment of the claim to have the res delivered on the strength of the deposit or bailment contract. While this has been taken account of in the deed of gift by the provision of paragraph 4, the inclusion of a corresponding clause regarding the creation of the usufruct has been overlooked. It should have therefore been stipulated that the son, for the purpose of creating the usufruct, in turn reassign to the parents, after the transfer of title, the claim to the delivery of the shares which had been assigned to him according to paragraph 4 (which was necessary in order to effect the transfer of the title). Only thus would a valid usufruct have been created. But more than that: even if a valid

usufruct had been created, the in rem security thus achieved would have been lost by the sale of the shares. To be sure, the contracting parties have anticipated this case and tried to meet it in the contract by simply providing that the usufruct was to include the substituted assets as well. But this agreement is no doubt also invalid, because the requirement of defining it particularly the res in question which is essential in all transactions affecting title is lacking. Therefore in conclusion it must be stated that the parents have not achieved the intended position as usufructuaries.

Nevertheless, one might ask whether the contract may not be interpreted to imply that the parents have the right, at any rate (p. 5) to demand the subsequent establishment of a valid usufruct. In my opinion, such an interpretation would be entirely correct, since it takes due account of the intent of the contracting parties which was clearly expressed by the provisions of the contract.

It must, however, be noted that it makes a great difference whether the parents have the in rem security of a usufruct or only a so-called in personam claim to the creation of a usufruct. If the parents are usufructuaries they have immediate title to the income. If, on the other hand, they have only an in personam claim to the creation of a usufruct, then the income accrues directly to the son.

This legal situation is of great importance not only from the point of view of private law, but also of almost decisive consequences as regards the provisions of the foreign exchange law. If a valid usufruct was created, the parents have immediate title to the income and are, therefore, obliged to report and to deliver the foreign exchange which has automatically accrued to them. In this connection it must be remembered that the duty to convert foreign exchange cannot be rendered nugatory by a subsequent waiver by the parents of the automatically accrued income, for

even a waiver is a "Transfer" within the meaning of the foreign exchange regulations, requiring a specific license. These results flowing from the provisions of the law concerning foreign exchange control were evidently not taken into consideration when the contract was concluded.

But since a valid usufruct has not been created and hence immediate title to the income does not accrue to the parents, no legal obligation to report and to deliver arises, under the provisions of the foreign exchange control law, for no foreign exchange accrues automatically. For this reason, no penalty should have been imposed for a violation of the provisions governing foreign exchange control with respect to the income from the usufruct, since (p. 6) no valid usufruct exists at all, and therefore a legal basis for conclusions grounded on foreign exchange control law is lacking. (As early as last year, on the occasion of the discussions on the foreign exchange case, the undersigned set forth these principles of private law, but was unable in the general excitement of those days, to get any attention to these legal considerations which require a rigid concentration of mind and are very difficult to understand for a layman; he therefore did not get a chance to present these arguments to the legal experts of the ministries). The mere in personam claim to the creation of a usufruct, the only thing that exists, is entirely irrelevant within the meaning of the foreign exchange law, since it does not constitute a claim within the terms of its provisions.

If it is thus established that the income accrues directly to the son, a further question is presented, regarding the existing rights during the period in which the parents do not insist on stipulating a usufruct with in rem validity. It must be assumed that by way of interpretation, one would arrive at the conclusion that the parents should have a claim arising from unjust enrichment on the ground that it was evidently the intention of the contracting parties

that the parents were to get the income less 20%. This claim arising from unjust enrichment further includes a claim to information and to an accounting, for without this ancillary claim the parents would have no means of enforcing their claim for payment based on unjust enrichment.

III.

The Advancement.

The validity of the provisions pertaining hereto (paragraphs 6, 7, 8 and 9) is free from doubt since they merely establish in personam claims. It follows that the duty to account for the advancement, can validly include the substituted assets and the unused income (p. 7).

Now, these provisions stipulate that when the advancement is accounted for, the value of the shares or their substitutes including the income not used as of the date of the accounting for the advancement shall be used. This provision makes it necessary that in the event when the time for accounting has arrived, comprehensive information must be given and accounts rendered by the son; in addition, an evaluation or estimate with respect to the assets involved in the accounting must be made, which may prove very difficult.

This stipulation may be changed against the will of the son only by a testamentary act of the father which would encumber the son with an advancement in favor of the daughter. If the son consents, however, it can be changed simply by a supplementary agreement amending the deed of gift.

If it is to be the purpose of such an agreement to eliminate the difficulties which will arise in the event of an accounting, then it would be advisable to fix the value of the advancement in a definite account now. Difficulties

would arise solely in connection with the usufruct problem. Things are simplified, however, if the parents waive the subsequent establishment of a valid usufruct. I presume that this will be the case, if for no other reason than the results flowing from the provisions the foreign exchange control law. If, thus a lien for the parents is eliminated, the question arises whether it would not be advisable to stipulate in personam obligations which establish a duty of the son to make contributions to his parents in the event of need. In my opinion, such an agreement would be rather ineffective as a practical means of securing such a claim. Moreover, it must be remembered, that the son is already required by law to support his parents i.e. by reason of the provisions of the law regarding the obligation of maintenance, which give the parents, in case of need, automatic claim against their son to maintain them in keeping with their social station (p. 8). Aside from this, the parents would, according to the provisions of law concerning gifts, have a legal claim to the return of the gift within ten years from the date of the gift, if they become unable to support themselves in keeping with their social station. In this connection it may be mentioned that the son may avert this claim for the return of the gift by paying for the maintenance of his parents in keeping with their social station.

If the value of the gift is fixed at a definite amount which is to be used as basis for the settlement, then the son would have to carry the economic risk. It would then be logical not to increase the advancement by the amount of the unused income from the usufruct, but rather to stipulate that the value at which the gift which is to be settled be reduced by the sum total of payments which may have been made by the son since the gift was made.

A draft of the proposed amendment of the deed of gift is attached.

(sgd.) D. Gros
Attorney-at-law

Plaintiff's Exhibit 97

(Translated from a photostatic copy of a carbon copy of the German original)

Dr. D. Gros
Attorney-at-law

Berlin, Columbushaus, October 8, 1935
W 9, Potsdamer-Platz 1

An den Herrn
Praesidenten des Landesfinanzamts Wiesbaden,
(Devisenstelle)

In the deed of gift of October 5, 1931, Geheimer Kommerzienrat Dr. Wilhelm von Opel and his wife Marta, nee Bade, transferred to their son Fritz von Opel 6 million shares nominal value, of the firm of Adam Opel A. G. reserving to themselves the right of usufruct in these shares in case of need.

The undersigned, examined the deed of gift from the point of view of private law and has ascertained that a usufruct for the parents did not materialize because the provisions of article 1032 of the BGB (Code of Civil Law) have not been complied with.

The parties to the agreement intend to take action on the basis of this conclusion and to declare explicitly, in a supplement to be drawn up to the deed of gift, that the usufruct stipulations contained therein will be considered as void. By law such a declaration is not required, because it will not create any new rights, but simply declares the rights of all concerned as they already existed. However, in order to create a clear legal situation and to avoid controversies about hereditary rights, the undersigned has advised to declare once more formally, that the usufruct clause is considered void.

In the opinion of the undersigned the supplementary declaration will have no relevance to the foreign exchange regulations. However, in order to give the parties concerned a feeling of complete security, I have thought it advisable to submit the supplementary declaration to the Foreign Exchange Control Office for their information and approval.

In the interest of legal certainty I am therefore asking you on behalf of the parties concerned,

to issue a certificate to the effect, that the intended supplementary declaration does not violate any foreign exchange regulations.

A draft of the supplementary declaration as well as a copy of the deed of gift are enclosed.

(sgd.) Dr. Gaos
Attorney-at-law

(Translated from a photostaic copy of a copy of the German original)

Supplementary declaration to the deed of gift of October 5, 1931.

I, the undersigned Geheime Kommerzienrat Dr. ing. h. c. Wilhelm von Opel, and my wife Marta, nee Bade, intended by the above mentioned gift agreement to reserve for ourselves an in rem guaranty in case of need and believed, therefore, to have acquired a right of usufruct subject to a condition precedent by way of the usufruct provisions. However, an examination of the deed of gift has shown that under the rules of private law, the in rem guaranty we intended to secure for ourselves in case of need was not achieved at all, since the provisions of the law of personal and real property governing the establishment of a usu-

fruct were not complied with. For we neglected to conclude an agreement with our son to the effect that he reassign to us the claim of delivery of the shares to us, which claim we assigned to him for the purpose of having the title transferred to him. However, such an agreement would have been required to establish a valid right of usufruct. The legal examination has further shown that even if a valid right of usufruct had been established, it would have become void at any rate by the later sale of the shares.

In the meantime we have become convinced that a sufficient guaranty is afforded us by the legal provisions governing the obligation of support as well as by the legal provisions governing gifts, which provide that we have a claim against our son for the return of the shares in the event of our inability to support ourselves in accordance with our station in life.

In view of the foregoing we declare, also with a view to preclude any future dispute over the dispositions of our estates that we consider as void the provisions of the above mentioned deed of gift concerning the usufruct.

I, the undersigned Diplom-Ingenieur Fritz von Opel, have read the above and consent to its contents.

Plaintiff's Exhibit 98

Copy

Berlin, November 22, 1935

Re: Application of the undersigned to the Wiesbaden foreign exchange control office of October 8, 1935.

The gift agreement of October 5, 1935, starts by assigning title to the donated shares, with careful attention being

given to all the details required in such cases by the law of property. It then goes on to say that the usufruct of the shares shall not be assigned.

The question might arise in this connection whether the parents have not simply retained title to the usufruct, and whether the transfer of title has not been confined to a limited portion of the property.

The possibility of such a legal arrangement touches fundamental principles of the system of real property. Such an arrangement cannot, however, be brought into accord with the principles of the present German Civil Code, since usufruct, is not a quantitative part of the property, but a right sui generis. This has been established by the decisions of the courts (cf. KGJ.—decisions of the Berlin Kammergericht, Supreme Court of Appeal) edited by Johow—51st volume, page 291, and 43rd volume, page 229). Copy of the decision in the 51st volume of the KGJ is enclosed herewith.

(sgd.) Dr. Gnoss
Attorney-at-law

An die
Reichsstelle fuer Devisenbewirtschaftung,
attention Assessor Rentrop,
Berlin W 8, Behrenstr. 43.

(Translated from a photostatic copy of the German original.)

Copy

From the Jahrbuch fuer Entscheidungen des Kammergerichts

(Supreme Court Report of Court of Brandenburg)

Volume 51, page 291, No. 73.

No usufruct of a mortgage for the mortgagee.

A mortgagee cannot establish a usufruct of his own mortgage for himself. If he wants to retain the usufruct for himself when assigning the mortgage, then this can only be done by the new mortgagee who has to establish a usufruct for his predecessor.

Civil code of August 18, 1896 (Reich Law Gazette page 195) articles 1018 etc., 1069, 1154; Act concerning the Registration of Real Estate (Grundbuchordnung) of March 24, 1897/May 20, 1898 (Reich Law Gazette 1898, page 754) articles 19, 26.

Decision of April 11, 1918 (1, X. 55/18), Amtsgericht and Landgericht (Lower court and superior court) of *Stettin.* On July 30, 1917, Mrs. J. assigned to her daughter, by a deed drawn up by a notary public, a mortgage loan claim of RM 100,000.00 which was registered in her name, bue reserved to herself the "usufruct" of this claim. In this deed she simultaneously consented to, and applied for, the registration of the assignment and of the "reserved usufruct" in the land register.

She also declared that, because of the reserved usufruct, the mortgage deed would remain in her possession, and that the agreement regarding the usufruct was to serve as substitute for the conveyance. The land registry office objected to this application by means of an interim decision. The complaint of by Mrs. J. was not successful. A further complaint on her part was refused.

Arguments.

The previous mortgagee has consented to, and applied for, the registration of the assignment of the mortgage to her daughter, and the reservation of the usufruct for herself. The document of July 30, 1917, furthermore contains the declaration of assignment of the former mortgagee, and her declaration that she reserves the usufruct to herself. The land registry office with the consent of the court of appeal demands, that the document be supplemented, arguing that a usufruct is an independent right, which would have to be established by the new mortgagee, because the former mortgagee could not conclude a contract with herself. This opinion is correct. A usufruct (articles 1030 through 1089, Civil Code) in its relation to the object or right encumbered by it is an independent right (p. 2) (KGJ—decisions of the Kammergericht*) (Supreme Court of Brandenburg) edited by Johow, vol. 43, page 229). Together with the real estate servitudes (articles 1018 to 1029) and the limited personal servitudes (articles 1090 through 1093) it belongs to those servitudes which are dealt with in book 3 section 5 of the Civil Code. The characteristics common to all servitudes are that the substance of the right is directed towards the use of a res of another person or the property of another person (cf. Turnau-Foerster, Liegenschaftsrecht (Real Estate Law) third edition, vol. 1 page 554; v. Staudinger, Civil Code, 7th and 8th editions, vol. 3 page 543; RGRaete—Commentary to the Civil Code by the Supreme Court Justice—second edition, article 1018, Note 1). According to these commentaries and in accordance with the principle that no person can conclude a contract with himself, the very concept of a servitude precludes the possibility that a

person could establish a servitude for himself in his own *res* or his own right (cf. KGJ 20 page A 297; RGZ—Reichsgerichts-Entscheidungen in Zivilsachen (Supreme Court Decisions in Civil Matters) 47 page 208; Guethe, GBO—Grundbuchordnung, (Act concerning the Registration of Real Estate) third edition vol. 2 page 1755, "Rights in one's own *Res*". It follows that a mortgagee cannot establish for himself a usufruct of his own mortgage. The legal situation is the same in case the mortgagee, simultaneously with establishing the usufruct for himself, assigns the mortgage to another person. Because in this case as well he wishes to establish for himself the usufruct of the mortgage which he still owns, i.e. establish for himself the usufruct of a right of his own. According to the above argumentation this is inadmissible (same arguments in Oberneck, GBR—Grundbuchrecht—Commentary, Law concerning the Registration of Real Estate, 4th edition, 1, page 680). The assumption, however, that the mortgage is being assigned without the right of usufruct, and that the former mortgagee would remain the owner of the right of usufruct, is contradicted by the consideration that a usufruct is by no means a quantitative part of the mortgage but according to the Civil Code, an independent right (KGJ vol. 43 page 229). Therefore, the intended reservation of the usufruct can only be obtained if the new mortgagee establishes the usufruct in favor of the former mortgagee. Likewise, the new mortgagee is the only person affected by the establishment of the usufruct in the sense of article 19 GBO. In the face of this the complainant is wrong in citing the decision of the Kammergericht quoted in OLG (decisions of the Oberlandesgericht) 12 page 287, as well as Planck, Commentary to the Civil Code, third edition, 1158 Note 2, and Predari, GBO, second edition, article 61, note 3, because it cannot be admitted that in these decisions and commentaries opinions were expressed which would contradict the above stated views. In view of

the special legal situation a different interpretation was placed on those cases only where it was not the former mortgagee who was to become the beneficiary of the usufruct, but in which simultaneously with the assignment the usufruct was to be established in favor of a third person (KGJ 40 page 277; see also 43 page 227). If in her second complaint the complainant alleges that according to the Civil Code a mortgage may be assigned under reservation of a right of usufruct, in the same way as according to Common Law, it could have been assigned deducto usufructu, then the question may be left open what the legal situation was according to Common Law. From the point of view of the law laid down in the Civil Code, which is the only law to be considered in the present case, the opinion of the lower courts alone can be recognized as correct.

To establish a usufruct of a bonded mortgage it is, according to articles 1069, 1154 of the Civil Code necessary that a declaration establishing it be made in writing and that the mortgage deed be delivered. The registration of the usufruct in the land register may take the place of the written declaration establishing it (article 1154, paragraph 2 Civil Code). In general, it is not for the judge in charge of the land register to examine whether or not the material prerequisites have been fulfilled. All he needs, therefore, apart from the presentation of the mortgage deed and, if necessary, the registration of the person establishing the usufruct is the approval of the registration by the person establishing it, whereby this approval, which has to be given in the form prescribed by article 29 GBO, is a matter of formal law (articles 19, 40, 42, 62 BGO; KGJ 40 page 277). In the present case of article 26 paragraph 2 GBO the material declaration concerning the establishment of the usufruct (p. 3) has already been granted recognition as a sufficient basis for the registration, in place of the approval of the registration (Decisions

of the Supreme Court published in [the periodical] "Recht" 1912 No. 1007; commentaries of the GBO: article 26 by Guethe, third edition, Note 7, 15; Arnheim, second edition, note 13; Predari, second edition, note 3). In the present case, the mortgage deed has been submitted to the land registry office. The new mortgagee shall be registered in the land register before the usufruct is registered. Therfore, what is still needed is the approval of the registration by the new mortgagee, which has to be given in the form prescribed by article 29 GBO, or der declaration concerning the establishment of the usufruct, to be made in the same form. The interim order, sustained by the Landgericht, which demands a "supplement" must therefore, in the light of the argumentation attached to it, be understood to mean that one of these two documents (approval of registration, or declaration concerning the establishment of the usufruct) still has to be submitted. In view of the above explanations, this demand is justified that to that extent no further complaint may be sustained.

Plaintiff's Exhibit 99

Dr. D. Gros
Attorney-at-law

Berlin-Columbushaus, February 8, 1936.
W 9, Potsdamer Platz 1

In reply to the decision of December 13, 1935, of the Regional Revenue Office, Kassel, Frankfort am Main branch, issued upon instructions from the Reich Office for Foreign Exchange Control, I beg to state the following:

I.

A. In the draft of the supplementary declaration and in the statements of the undersigned of October 8 and Novem-

ber 22, 1935, it was set forth that according to German law a valid usufruct had not been agreed upon.

Now, according to German law of conflicts the law of that country is applicable to the establishment of a usufruct in which the *res* in which the usufruct is to be created is physically located (lex rei sitae). Since the donated shares were deposited in the United States, the law of that country would have to be applied. However, the usufruct, as a legal institution, is unknown to American law.

But even assuming a valid usufruct as having been established, a waiver of the right of usufruct would not require a license under the terms of the foreign exchange control laws. There are no provisions in the foreign exchange laws which could be construed as a basis for the requirement of such a license. The usufruct as such is, in fact, outside the scope of the property rights to which the foreign exchange law applies (cf. article 6 paragraphs 1-5 and article 24 of the Foreign Exchange law). This is also justified by the nature of the matter because a usufruct, being an absolutely personal, inalienable and uninheritable right, is in direct contrast to the *negotiable* rights to which alone, according to its nature, the entire foreign exchange legislation and control can apply. The fact that monetary claims or any other of the rights enumerated in article 6 paragraphs 1-5 and article 24 of the Foreign Exchange law, might arise from a usufruct in favor of the beneficiary of the usufruct does not justify characterizing the usufruct, as such, as a right subject to foreign exchange laws (c.f. Hartenstein, appendix to article 14, page 140).

Now, there cannot be any doubt that a valid usufruct has not been agreed upon; for the requirement of publicity, indispensable for the validity of a usufruct, is lacking. However, by way of a liberal interpretation of the agreement, one might concede that the parents have an in personam claim to the subsequent establishment of a valid

usufruct. But such an in personam claim would at any rate not be subject to foreign exchange legislation, because it does not result in an *immediate* accrual of the legal benefits as in case of the usufruct; it does not even represent a future claim to such benefits, but merely an expectancy which is remote, and not definable by law or economics (p. 2).

B. As regards the substance of the "usufruct", this right was meant by the interested parties, right from the start, to become effective only if and when they should become unable to maintain a standard of living in keeping with their social station. It is true that this conditional character of the usufruct was not made as clear in the deed of gift as would have been desirable, but the intention of the parties to the agreement was from the very beginning directed towards that end and has been manifested ever since by their actual conduct both before and after the conclusion of the agreement.

For an intelligent interpretation of the agreement, one must not overlook the fact that the assumption of an unconditional usufruct would presuppose that the parties themselves intended to frustrate the agreement in an almost absurd fashion. Furthermore the following observation is in point:

The fact that the parties themselves did not aim at a usufruct to become effective immediately upon conclusion of the agreement is shown by the provision of paragraph 8 of the deed of gift that the advancement will be increased by the income not withdrawn; they would, on the other hand, not have neglected to include in the agreement a provision regarding the re-assignment of the claim to the shares delivered, if the possibility that the usufruct should become effective immediately had at all entered their minds. Finally, the conditional character of the usufruct is clearly proved by the report made on October 27, 1933, in com-

pliance with the Law concerning Treason to the People, this report reads as follows: "*Conditional* usufruct according to the provisions of the deed of gift of October 5, 1931."

II.

The facts are as follows:

As already reported to the branch office in Frankfurt am Main Mr. Fritz von Opel no longer owns the General Motors shares in question. In keeping with the tradition of his family, he invested his money in industrial enterprises. A specified list of the investments of Mr. Fritz von Opel was handed to the Reichsbankdirektorium at the conference of June 29, 1934. Reference may be made to this list. The enclosed complete statement of the attorney-at-law Mr. E. Meier of February 5, of this year shows the present status of Mr. Fritz von Opel's property and income.

III.

In the interests of legal certainty an authentic declaration of the applicable provisions of the foreign exchange control laws to the facts of the case is required. This certainty will be attained if the following determinations are made.

1. The parents have an in personam claim to the establishment of a usufruct subject to a condition precedent to become effective if and when they should become unable to maintain a standard of living in keeping with their social station

2. No foreign exchange license is needed to dispose of the claim mentioned under 1.

From a financial viewpoint, the parents are not in need of a subsequent establishment of a usufruct, subject to a

condition precedent, to become effective in case of need, since they are sufficiently secured, by law, by the provisions concerning the obligation of maintenance, as well as the regulations governing gifts, which provide that a donor may claim from the donee the restitution of the gift, in case he becomes unable to maintain out of his own means a standard of living in keeping with his social station. For these reasons the parents do not intend to assert their claim, if such an in personam claim exists, to a subsequent establiishment of a usufruct, subject to a condition precedent, and to take steps against their son for its enforcement.

Should the National Office of Foreign Exchange Control intend to include in its decision a demand for another delivery of foreign exchange, the undersigned begs to point out now, that in view of the present financial position of Mr. Fritz von Opel only a very limited amount of foreign exchange could be delivered presently, since means for that purpose could not be made available without selling property assets at very great loss and since raising another loan would involve considerable difficulties and even considerable risks.

A copy of this letter was sent to the Branch office in Frankfort am Main.

(signed) Dr. Gros
Attorney-at-Law

An die Reichsstelle fuer
Devisenbewirtschaftung
(National Office for
Foreign Exchange Control)

Berlin W. 8,
Behrenstrasse 43

1912

Plaintiff's Exhibit 100

Dr. D. Gros
attorney-at-law

Berlin-Columbushaus, March 11, 1936
W 9, Potsdamer Platz 1,

Subject: Geheimrat Dr. Wilhelm von Opel.

In the deed of gift of October 5, 1931, a copy of which is enclosed, Geheimrat Dr. Wilhelm von Opel and his wife intended to reserve to themselves a security interest in the legal form of a right of usufruct, to become effective in the event that they themselves would at some time become financially distressed. All controlling parties were fully agreed when making the contract, that the usufruct was to be subject to a condition precedent and to become effective only in case the parents should become unable to maintain themselves in a standard of living in keeping with their social station. It is true that this conditional nature of the usufruct was not defined as precisely in the text of the deed of gift itself, as would have been desirable. But as mentioned already, the intention of the parties was directed to this and from the very beginning and this intention has been manifested by the actual conduct of the parties both during and after the conclusion of the agreement. The fact that contracting parties, when concluding the contract, in no way intended to create a usufruct to become effective immediately, appears from the provision of paragraph 8 of the deed of gift that the advancement was to be increased by the income not withdrawn. It is furthermore an indispensable prerequisite for the creation of a valid usufruct that the requirement of publicity as provided in section 1032 of the Civil Code has been fulfilled. The parties, however, would not have failed to agree on reassigning the claim to the deposited shares,

a claim that had originally been assigned for the purpose of transferring title, if they had at all contemplated making the usufruct effective immediately.

Finally, upon an intelligent interpretation of the contract it ought to be considered that an assumption of an unconditional usufruct would presuppose that the contracting parties themselves intended to defeat in a perfectly nonsensical manner, the very purpose for which the contract was concluded. And ultimately, the conditional character of the usufruct is proven unmistakably by the report of Geheimrat Wilhelm von Opel of October 27, 1933, made in compliance with the Law concerning Treason to the People, which reads as follows: "*Conditional* usufruct according to deed of gift of October 5, 1931."

But even this right of usufruct subject to condition precedent, intended by the contracting parties has not materialized. In the first place, as mentioned above, the indispensable prerequisite of publicity as required by section 1032 of the Civil Code was disregarded, i.e. the creation of a valid usufruct would have required an explicit agreement regarding the re-assignment of the claims to the deposited shares in lieu of delivery. On the other hand, the fact was overlooked that, according to the German law of conflicts, with respect to real and personal property, the law of the country where the res is found governs the creation of rights in that res (lex rei sitae). The donated stock, however, was deposited with a New York bank, so that the provisions of American law should have been applied. However, the usufruct is an institution unknown to American law.

Now, if the contract were to be construed liberally, one might be inclined (p. 3) to concede to the parents a in personam claim to a subsequent establishment of a usufruct subject to a condition precedent. However, economically speaking the parents are not in need of such a subsequent

establishment, in case of an emergency, of a usufruct subject to a condition precedent. Since the parents are sufficiently secured by law, by the provisions concerning the obligation of maintenance as well as the principles regarding gifts, which provide that a donor may claim from the donee the restitution of the gift in case he becomes unable to maintain from his own means a standard of living in keeping with his social station. For these reasons the parents do not intend to assert their in personam claim, if any such claim exists, to a subsequent establishment of a usufruct subject to a condition precedent or to take steps against their son in order to enforce it.

The remarks referring to the usufruct in the income and property tax return for 1934 of Geheimrat Dr. Wilhelm von Opel and his wife were vague and not made by an expert. Moreover, any remarks referring to the usufruct are irrelevant as far as taxation of income is concerned, and any reference to the foreign exchange law aspect of the question is misleading, since so far Geheimrat Dr. Wilhelm von Opel and his wife did not receive any income from the alleged usufruct. An explanation of these remarks is to be found in the fact that the foreign exchange law aspect of the question was being handled in a way which gave the parties concerned a certain legal uncertainty, which, in turn, induced them, as a precaution, to say rather more than was really necessary.

Therefore, as regards the property tax which would be the only one relevant in the case, I beg to point out that the in personam claim of the parents to the establishment of a right of usufruct, subject to a condition precedent, to become effective in case they would be unable to maintain a standard of living in keeping with their social station, does not represent any assets at the present time. This in personam claim is not subject to property taxation particularly since economically speaking, it is to all intents and

purposes identical with the maintenance claim already existing by virtue of the law.

In case any further information should be desired in addition to the above explanations the undersigned would ask to be instructed accordingly.

sgd. Dr. Gros
attorney-at-law

An das Finanzamt Wiesbaden,
Wiesbaden,
Herrngartenstr. 1-5

Plaintiff's Exhibit 101

Dr. Daniel Gros
Attorney-at-law
Berlin W 62
Budapester Str. 33

July 7, 1937

Herrn
Reichsbankdirektor Wilhelm

Berlin SW 11
Jaegerstrasse 34/36

Subject: Usufruct case von Opel.

Sir,

With reference to our conference of June 27 in the above matter I beg to inform you of the following:

I informed Mr. Fritz von Opel that you told me that your legal aides in charge of the usufruct case also denied that Geheimrat Dr. Wilhelm von Opel had a monetary claim

against Mr. Fritz von Opel and that, consequently, no legal obligation exists within the terms of the provisions of the foreign exchange law.

Furthermore I informed Mr. Fritz von Opel that, notwithstanding this legal situation, you are taking the view that for various reasons and because of the foreign exchange situation he is obliged to deliver foreign exchange.

Mr. Fritz von Opel stated in his reply that even after the legal situation had now been defined authoritatively he wished, now as before, to do his share in relieving the demand for foreign exchange, which is so particularly pressing at the present moment, by voluntarily offering foreign exchange, but that he would not be willing (p. 2) to recognize the existence of a special extra-legal obligation thereto.

I have now proposed to Mr. Fritz von Opel to do his share to ascertain in an unbiassed way his net income and his ability to pay, which in your opinion you could not do without. This could be done by giving a leading firm of chartered accountants to be designated by the Reichsbank (say Haskins & Sells, Price-Waterhouse, Deutche Treuhandgesellschaft) a chance to make a thorough audit.

As far as the scope of such an audit is concerned, I think its aim should be to ascertain whether the Overseas Finance Corporation, Zurich, 16 St. Peter Str. would have been in a position already in the past to pay to Mr. Fritz von Opel any dividends or interest, if its accounts had been correctly balanced and how much the Overseas could perhaps be expected to pay to him from their distributable net profits in the near future.

Should you wish to extend the audit to include the American companies which form part of the assets of the Overseas Finance Corporation, the Overseas will arrange, through its voting power in the meetings of the Board of Directors or of the stockholders, that the American com-

pany, charged by the Reichsbank with the audit, be enabled to carry out its audit.

Such an audit, it seems to me, would have to aim at ascertaining whether these companies accumulated any open or hidden reserves in excess of those amounts which are considered customary in their branch of business, whether their business situation is such, as to justify using part of their funds to pay a dividend (p. 3) to the Overseas Finance Corporation and, if this is the case, how the balance sheet of the Overseas Finance Corporation would be affected by such payments.

Heil Hitler!

Sincerely yours

(sgd.) Dr. Gros

Plaintiff's Exhibit 102

Decision of the
SWISS FEDERAL SUPREME COURT

Civil Bench of Oct. 8, 1935.

Rheinische Handelsgesellschaft

Defendant,

v.

A.-G. fur Immobilienwerte

Plaintiff.

Official Record Volume 61, Part 2, Page 245 of Die Praxis Des Bundesgerichts Volume 24, Page 453 No. 175

175. German Foreign Currency Regulations Shall Be Disregarded By The Swiss Courts.

The A.-G. fur Versicherungswerte in Zurich made a loan of R. M. 6000 to the Rheinischen Grundstucks-Handelsge-

sellschaft m.B.H. on April 15, 1931 for three years with 6% interest. On December 30, 1933 the claim has been assigned by the A.-G. für Versicherungswerte to the A.-G. fur Immobilienwerte in Zurich. The assignee notified the assignment to the defendant on April 12, 1934 and ordered her to pay back the loan on April 15, 1934. The Defendant referred in its answer of April 23rd to the German Foreign Currency Regulation and asked plaintiff to agree that payment should be made on an account of blocked credit marks Kredit-Sperrmark-Konto. The plaintiff refused this proposition in his letter of May 4, 1934. Plaintiff, A.-G. fur Immobilienwerte brought a lawsuit for upholding the attachment of defendant's property and a claim has been upheld by the Commercial Court of Zurich. The Swiss Federal Supreme Court confirmed the decision with the following arguments:

1. The court below declared in correspondence with the parties that German law is applicable for the loan and for the assignment. The debtor had his domicile in Germany and the transaction was made in marks. So it is in fact to be assumed that the parties in making a loan contract considered the applicability of German law or at least they would have considered the applicability of German law if they had thought to fix the applicable law. (See for instance, BGE 54 II 316 E. 2 = Pr 17 Nr 185; 60 II 300 f. E. 2 = Pr 23 Nr. 147). This is confirmed by the position taken by the parties in the process—the plaintiff has taken the position of the creditor—. On the other hand under the precedence of the Federal Supreme Court the validity of the assignment is controlled by the same law that controls the assigned claim. That mean in this case also the German law (BGE 18 S. 522; 23 I 142; 39 II 76 f. E. 4 = Pr 2 Nr. 92; 41 II 134 E. 1 = Pr. 4 Nr. 88). From that would follow that the case cannot be considered by the Swiss Federal Supreme Court (Articles 56 and 57 Statute on Federal

Procedure).[1] But the general applicability of the German law doesn't decide without further adieu if the Swiss Judge has really to apply this law. The question, if that is the case, is a problem of Swiss conflicts of law and has to be considered by the Swiss Federal Supreme Court (BGE 56 II 180 = Pr 19 Nr. 100).

2. From the beginning there is no discussion about the applicability of the rules of the German Civil Code because the defendant does not deny that under Section 607 of the German Civil it has become, by accepting the loan, the debtor of the A.-G. fur Versicherungswerte for an amount of R.M. 6000 and that the assignment of the claim to the plaintiff has been made in a correct way under Section 398 of the German Civil Code.

The defendant opposes to the claim indeed by reference to the German Foreign Currency Regulations and it says

a) that without a license of the German Devisenbewirtschaftungsstelle the assignment is void, and

b) that the performance of her duty as stipulated previously in the loan contract has become impossible and that therefore the duty to perform has been extinguished to this extent (§ 275 German Civil Code).

So the question mentioned before-hand arises, if the German Foreign Currency Regulations can be applied by a Swiss Judge; if the applicability of the German Foreign Currency Regulations is upheld the case is decided immediately for lack of a right to claim of the plaintiff, because the assignments were void under §15 of the German Foreign

1 These provisions limit the jurisdiction of the Swiss Federal Supreme Court to the application of Swiss Federal law. The Swiss Federal Supreme Court cannot investigate if foreign law has been applied in the correct way (By the Interpretor).

Currency law. That is the decision of the lower court and the Federal Supreme Court is bound by it (Federal Procedure Act, Sec. 57). On the other hand if the applicability is denied the judgment of the lower court has to be confirmed without further adieu.

3. The lower court denied the applicability of the German Foreign Currency Statute in the first line, because this statute belongs to the public law and because public law of foreign state should be disregarded by a Swiss Judge. It must not be decided if that is correct, because in all events the applicability is excluded for the other reasons given by the plaintiff. The prohibition of payments of the German Foreign Currency law and the other restrictions about claims are interferences with creditor rights in order to spoil them (spoliativen Eingriff in die Glaubigerrechte) and these prohibitions are contrary to the basic velocity of the Swiss Regulation Order. From this follows that the German Foreign Currency Regulation cannot be taken into consideration by a Swiss Judge either directly insofar as has been the contents of a claim, nor indirectly insofar as they make the performance impossible. The Federal Supreme Court has already decided in this way, in his judgment of September 18, 1934, in the case Nathan-Institut A.-G. c. Schweiz, Bank fur Kapitalanlagen entschieden (BGE 60 II 310 = Pr 23 Nr. 147) and we can refer to the arguments given there.

4. The defendant must agree itself that its position is prejudiced to a large extent by Swiss case law and by the judgment named above. The defendant asks basically just for reconsideration of the rules as laid down in that judgment, by making reference to some specific circumstances of the case at bar, by referring to the Article 164 of the Swiss Code of Obligation and the Decision of the Swiss Federal Supreme Court in BGE 42 II 380 ff = Pr 5 Nr. 127

and 43 II 230 ff. E. 4 = Pr 6 Nr. 118, by referring to the clearing agreement made between Switzerland and Germany to the Swiss Foreign Currency Regulations and finally to decisions of the German Supreme Court and the Austrian Supreme Court.

a) As to the special circumstances of the case the defendant alleges that the plaintiff got the claim in a moment when the German Foreign Currency Regulations were yet in force for a long time, and defendant says furthermore that the plaintiff undoubtedly just paid the exchange rate for blocked marks which is 30-to-40%, but both allegations have nothing to do with the problem if the German Foreign Currency Regulations are in contradiction with the Swiss Public Order. In fact the defendant intends to allege that the plaintiff acts against good faith if it asks for payment of the full debt (that really was a problem of the Swiss Public Order but it works in the contrary discussion in favor of the defendant). This objective is immaterial. The plaintiff got the claim by the assignment with all its rights, and it can claim these rights in full without becoming liable for abuse of rights. It is not up to the debtor to investigate under what circumstances and for what price the assignee acquired the claim.

b) The defendant referred to Article 164 of the Swiss Code of Obligations to show the invalidity of the assignment. It says that "the statute", namely the German Foreign Currency Regulations, stands against the assignment but that is just a petitio principii that presupposes that the Swiss Judge has to apply the German Foreign Currency Regulations and that must be denied for the reasons given above.

The defendant is also wrong with his reference to BGE 42 II 380 ff. = Pr 5 Nr. 127 and 43 II 230 ff. = Pr 6 Nr. 118.

In these cases dealing with the sale of eggs and wheat the Swiss Federal Supreme Court assumed that there was impossibility of performance because of the German and Austrian export prohibitions during the (First) World War. But these cases differ from the case at bar just in the decisive point whereas the direct or indirect applicability of the German Foreign Currency Regulations undoubtedly are against the Swiss Public Order. It was obvious that restrictions as to the export of merchandise of countries in war do not come under this rule.

c) Defendant alleged that Switzerland recognized that the German Foreign Currency Regulations is not in conflict with the Swiss Public Order because Switzerland made a clearing agreement with Germany and established for itself foreign currency regulations but the court below shows quite correctly that Switzerland entered the clearing agreement because it was forced to do so by the German Foreign Currency Regulations. Switzerland had to try to mitigate the disasterous consequences of the German Foreign Currency Regulations by counter-measures and by treaties. By entering the clearing agreement and by establishing foreign currency regulations for itself—regulations that after all are just based on this agreement—Switzerland never declared that the German Foreign Currency Regulations were corresponding to the basic concepts of Swiss law. They tried indeed only to protect the Swiss standpoint as well as possible against the interferences of the German law.

d) The German Supreme Court stated in a judgment of January 29, 1935 (s. Juristische Wochenschrift 1935 S. Nr. 2) that under the rules of good faith a foreign creditor could not refuse to accept payments on a blocked account instead of performance and the Austrian Supreme Court decided accordingly in Decision of September 25, 1934 (s.

"Die Rechtsprechung", 16. Jahrgang S. 206 Nr. 253) in favor of a Hungarian debtor in respect to the foreign currency regulations of his country.

The decision of foreign courts cannot be decisive for the establishment of the meaning of the Swiss Public Order by a Swiss court besides the fact that these cases are in contradiction with earlier decisions of courts of the same states. This point shows clearly the national aspect in deciding this kind of cases. Furthermore the two decisions have been criticized by the editors of the law reviews that published these decisions, especially the editor of the "Rechtsprechung" said that the decision of the highest Austrian court was "completely wrong."

5. Under these circumstances the Federal Supreme Court has no reason to go away from the rules laid down in the previous decision 60 II 294 ff. = Pr. 23 Nr. 147.

As to the impossibility of performance it may be said furthermore that the defendant seems to have assets in Switzerland because the plaintiff attached them and so the defendant can fulfill its obligations. In this case there is obviously no impossibility of performance. There is just a problem if under the rules of good faith the defendant can be asked to pay back the loan because the German Foreign Currency statute (paragraph 42, fig. 3) provides heavy penalties for a debtor who makes payments without a license. But this problem is out of consideration because the defendant doesn't pay by its free volition but opposes to the payment so that plaintiff has to meet the payment by way of coercion; to-wit, by judgment of court.

1924

Plaintiff's Exhibit 103

PRINCIPALITY OF LIECHTENSTEIN.

No. 11

Stamp Reading:

Government of the Principality of Liechtenstein.

FAMILY CITIZENSHIP CERTIFICATE.

The undersigned Municipal Council herewith certifies that the Diploma Engineer Fritz von Opel, born in Russelheim, on May 4, 1899, and his wife, Margot von Opel nee Lowenstein, born in Potsdam on January 17, 1902, are citizens of the Liechtenstein Municipality of Planken and that they are at all times welcome as such in this Municipality.

The Mayor of Planken
December 22, 1939.

The Municipal Council of Planken
Principality of Liechtenstein.

Signed: JOHANN JEHLO,

Deputy Mayor.

The genuineness of the foregoing signature and of the affixed official seal are herewith certified to.

The Government of the Principality of Liechtenstein.

Vaduz, December 27, 1939.

Signed: Strassner.

Stamp reading:

Government of the Principality of Liechtenstein.

Plaintiff's Exhibit 104

Chancery of the Executive of
the Principality of Liechtenstein

STATEMENT

We confirm herewith that Mr. Fritz von Opel, born May 4, 1899 has been granted on November 10, 1939, the municipal citizenship of the Liechtenstein municipality Planken and that he has been accepted at the same time as a national of the State of Liechtenstein.

Vaduz, October 22, 1948.

The Princely Chancery,
Joseph Buchel

(SEAL)

(Legalization by the Consul of the United States of America at Zurich follows.)

Plaintiff's Exhibit 162

INVESTMENT

Transdanubia Bauxite A.G. Budapest

Current Account

		Swiss Francs	*(Dollars)*
November 4, 1935	Oberregierungsrat Fayer	10,000	($ 2,326.)
November 15, 1935	Oberregierungsrat Fayer	5,000	(1,163.)

1926

		Swiss Francs	
November 30, 1935	Oberregierungsrat Fayer	5,000	
December 31, 1937	Escompte and Wechslerbank	130,000 9,436.40	
		120,563.60	
May 3, 1936	Simon von Kraus	15,807.30	
September 16, 1938	Dr. S. Gyula	4,161.50	
December 6, 1938	Budai Takerchpergtay	2,364.50	
December 31, 1938	Report on shares Pengoes 90,000		74,750
December 31, 1938	Balance		84,146.90
		162,896.90	162,896.90

1939

January 1, 1939	Balance	84,146.90	
June 19, 1939	Dr. S. Gyula, Pengoes 10,000	5,306.50	
		89,453.40	
August 2, 1940	Dr. S. Gyula, Pengoes 15,000	12,906.60	
		102,360.00	
March 3, 1941	Dr. S. Gyula, Pengoes 10,000	7,558.50	
		109,918.50	

(Note of the Interpretor—The last column showing the amount in dollars is not in the original.)

1927

Plaintiff's Exhibit 163

SPUR DISTRIBUTING CO.
Incorporated
NASHVILLE, TENN.

On October
Twenty-fifth
Nineteen Forty-three

Mr. James Markham
Asst. Alien Property Custodian
Press Building
Washington, D. C.

Dear Mr. Markham:

My letter of explanation has, I understand, just been forwarded to you. The enclosure further reveals the serious situation which confronts Spur. Platt's Oilgram (enclosed) is the oil industry's chief news service, and has long been absolutely depended upon as reliable.

The indicated military demand, or anything near it, will certainly eliminate "A" and "B" coupons. It will incidentally close down the Spur Company. If we are to protect ourselves by arranging credits, action must be taken at once. I don't see how it could be done later.

The conversion of the A. P. C. stock into first mortgage bonds would certainly strengthen your position and would enable the American stockholders to save themselves.

We will be grateful if a decision can be arrived at upon this matter.

Sincerely,

/s/ MASON HOUGHLAND
President
SPUR DISTRIBUTING CO., INC.

JMH:L

Plaintiff's Exhibit 168

COPY

J. M. Houghland
President

H. D. Hines
Executive Vice President

SPUR DISTRIBUTING CO.
Incorporated
Nashville, Tenn.

November 5, 1944

Recd. by APC 12-7-44

Mr. W. D. Bradford, Assistant,
Office of Alien Property Custodian,
Washington, 25, D. C.

Dear Mr. Bradford:

Enclosed please find copy of minutes of special meeting of Board of Directors held on November 9th, 1944.

Also enclosed is October operating report.

Yours very truly,

SPUR DISTRIBUTING CO., INC.

By H. D. HINES (Signed)

HDH:EDF

COPY

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF SPUR DISTRIBUTING CO., INC.

NOVEMBER 9, 1944.

Pursuant to call by the President and written notice as required by the By-Laws, the Board of Directors of Spur Distributing Co., Inc. met in special meeting at the office of the Company at Eighth Avenue and Bradford Avenue, Nashville, Tennessee, on Thursday, November 9, 1944, at 2:00 o'clock P.M. The following directors were present in person:

J. Mason Houghland
Paul M. Davis
H. D. Hines
Cecil Sims

J. Mason Houghland presided at the meeting as Chairman, and H. D. Hines acted as Secretary.

The written notice of the meeting was read by the Secretary and was ordered filed in the minute book immediately following the minutes of the meeting.

The President, J. Mason Houghland, stated to the Directors that the meeting had been called because the Company faces a most serious emergency growing out of the recent action of Uebersee Finanz-Korporation A.G. in instituting suit in the United States District Court at Washington, D. C., on October 25, 1944, the legal effect of which was to restrain and postpone the sale of the 73,000 shares of the Company's stock previously seized by the Alien Property Custodian on June 4, 1942, and advertised to be sold at public auction at 12:00 o'clock noon on Friday, October 27, 1944, at 120 Broadway, New York, N. Y.

It was the opinion of the directors that since the beginning of the war with Germany and the seizure of the above stock by the Alien Property Custodian as property belonging to an enemy alien, and the wide publicity given thereto, the Company had suffered great embarrassment and its activities had been impaired due to the general belief of the public that the Company was owned and controlled by German interests and the natural disinclination of American customers to do business with an enemy owned institution. The President pointed out to the directors that while all companies engaged in the marketing of gasoline and oil at retail had suffered considerably due to the emergency restrictions required by the war, the records of the Company disclose that Spur Distributing Co. has suffered more in proportion than its competitors due largely to the fact of the shadow of German ownership. He pointed out that by careful and painstaking investigation the Alien Property Custodian had finally established beyond the question of a doubt that Uebersee Finanz-Korporation A. G., while a Swiss corporation, held the stock for the beneficial ownership of the von Opel family, all of whom were German nationals and most of whom reside in Germany and have actively aided the German war efforts in the production of aircraft, tanks and rockets, it being commonly understood that the von Opels were the real inventors of the rocket principle for military use.

Notwithstanding these facts the Company had hoped to endure the situation and to carry on its business under these handicaps as best it could with the hope that the contemplated action of the Alien Property Custodian, in offering the stock for sale at public auction, would bring about its purchase and ownership by American interests and thereby prevent any further embarrassment to the Company except for that naturally to be expected from the limitations of war restrictions.

However, in view of the fact that the contemplated sale was not permitted to take place and the very evident fact that Uebersee has decided to test out its rights by court litigation, the President stated he was advised that a final determination of the title to the stock and the consequent right of the Alien Property Custodian to sell and dispose of it might not reasonably be expected in less than two to three years due to the fact that the pending suit would undoubtedly be litigated and tried on its merits in the District Court, appealed to the Court of Appeals and then to the Supreme Court of the United States. Mr. Houghland stated he was informed that similar litigations arising during the first World War lasted for periods ranging anywhere from two to ten years, and that under these circumstances it now appeared that the Company was faced with doing business under the positive assertion in court of the foreign ownership of the majority of its stock and that in his opinion it was vital to its continued existence that the Board of Directors consider some immediate plan for relief.

In the general discussion that followed Mr. Hines pointed out the fact that out of the 250 retail stations operated by the Company only 39 stations were owned outright and that the remaining stations were under lease; that these leases were expiring continually and that the average life of the outstanding leases of these stations was approximately 2–7/10 years. He stated that the Company was having great difficulty in obtaining renewals of these leases due to the fact that the Competitors had urged upon the owners that they should not continue to lease their property to a company which was considered to be owned and controlled by German interests. Mr. Hines stated that from a practical standpoint it was difficult, if not impossible, to offset the effect of such arguments and that in his opinion unless prompt action was taken the company faced a gradual disintegration so far as the future renewals of leases was concerned.

Mr. Houghland recommended that the directors consider the advisability of attempting to purchase outright as many of the leased properties as possible as one means of offsetting the difficulty of the Company in obtaining renewals. But Mr. Davis pointed out that this would require a large investment at a small return and would seriously deplete the cash resources of the Company.

Mr. Houghland suggested that it might be advisable for the Company to issue and sell additional stock in order to provide funds for acquisition and expansion purposes.

Mr. Sims suggested that the Alien Property Custodian might consider any sale of additional stock at less than book value as detrimental to his holdings and that consideration should be given to the position of the Alien Property Custodian. Mr. Sims further pointed out that of course a sale of additional stock at book value would be beneficial to the holdings of the Alien Property Custodian as well as to all other stockholders and that in his opinion, if additional stock was to be sold, every effort should be made to sell it at not less than book value if it was possible to do so.

Mr. Hines stated that while he agreed that the issuance and sale of additional common stock would be beneficial to the Company and would tend to preserve the value of the Company's outstanding stock, he questioned whether or not under present circumstances such stock could be readily sold for a sum equal to book value particularly in view of the fact that recently the stock had been sold at a price which was approximately one-half of book value.

Mr. Houghland stated that while he recognized the difficulties which would be encountered in disposing of additional stock at book value he felt that the effort should be made even though it might develop after investigation that it would be impossible to find a purchaser at this price.

RESOLVED by the Board of Directors that it is the unanimous opinion of the Directors that the future welfare of the corporation requires the issuance and sale of additional stock in such amount and for such consideration as may hereafter be determined by the Board of Directors, but that such stock should be sold for cash and for not less than book value, and J. Mason Houghland, as President of the Company, is authorized and directed to take up negotiations, for the issuance and sale of such stock and to submit the best proposition obtained back to the Board of Directors for final action.

There being no further business, the meeting adjourned.

.....
Chairman

Plaintiff's Exhibit 169

J. M. Houghland
President

H. D. Hines
Executive Vice President

SPUR DISTRIBUTING CO.
NASHVILLE, TENN.

November 6, 1944

Mr. W. D. Bradford, Assistant,
Office of Alien Property Custodian,
Washington, 25, D. C.

Dear Mr. Bradford:

Enclosed please find copy of Minutes of Special Meeting of Board of Directors, held on December 2nd, 1944.

Yours very truly,

SPUR DISTRIBUTING CO., INC.

By /s/ H. D. HINES

HDH:EDF

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF SPUR DISTRIBUTING CO., INC. DECEMBER 2, 1944.

Pursuant to call by the President and written notice as required by the By-Laws, the Board of Directors of Spur Distributing Co., Inc. met in special meeting at the office of the Company at Eighth Avenue and Bradford Avenue, Nashville, Tennessee, on Saturday, December 2, 1944, at 10:00 o'clock A. M. The following directors were present in person:

J. Mason Houghland
Paul M. Davis
H. D. Hines
Cecil Sims

J. Mason Houghland presided at the meeting as Chairman, and H. D. Hines acted as Secretary.

The Secretary read the notice of the special meeting, which was as follows:

NOTICE OF SPECIAL MEETING OF THE BOARD OF DIRECTORS OF SPUR DISTRIBUTING CO., INC.

You are hereby notified that a special meeting of the Board of Directors of Spur Distributing Co., Inc., will be held at the offices of the Company, at Eighth Avenue and Bradford Avenue, Nashville, Tennessee, at 10:00 o'clock A. M., on the 2nd day of December, 1944, for the following purposes:

(1) To consider and act upon the issuance and sale of Twenty Thousand (20,000) shares of Common Stock for cash at not less than book value with options to purchase an additional Fifty Thousand (50,000) shares of Common Stock for the same consideration, for the

purpose of securing additional working capital for the corporation.

(2) To consider and act upon the discontinuance of the services of the corporate Transfer Agent and the corporate Registrar, and amending Article V of the By-Laws by repealing such provisions thereof as require the stock of the corporation to be transferred by a Transfer Agent and registered by a Registrar, so as to permit the corporation, in the interest of economy, to perform such services on its own behalf.

(3) For the transaction of any other business which may lawfully come before said meeting.

This the 25th day of November, 1944.

.....

A. E. Peterson, Secretary

The Secretary was ordered to file a copy of such notice with certification of mailing at the conclusion of these minutes.

Mr. Houghland stated to the directors that he had received a telegram from Mr. James E. Markham, Alien Property Custodian, who had requested him to read the telegram to the directors. He did so and it was ordered spread upon the minutes, and is as follows:

WA323 60 GOVT—WASHINGTON DC 30 1052A
MASON HOUGHLAND—
CARE SPUR DISTRIBUTING CO.—NASHVILLE

With reference to Agenda on Directors (meeting scheduled December Second, pursuant to authority vested in me you are advised that no action in respect to issuing stock will become effective without approval of Custodian and possibly the Court. You are further

requested to read this telegram at the meeting and forward to this office copy of minutes of Directors' Meeting.

James E. Markham, Alien Property Custodian

Mr. Houghland stated to the directors that pursuant to the instructions of the Board, as set out in the minutes of the special meeting held on November 9, 1944, he had carried on certain negotiations relating to the issuance and sale of additional shares of the Company's stock for the purpose of securing additional working capital for the corporation and that the best proposition which he had been able to obtain was from Equitable Securities Corporation, of Nashville, Tennessee, which proposed to purchase 20,000 shares of the Company's Common Stock at book value as of October 31, 1944, which was $13.37 per share, provided the Company granted an option to Equitable Securities Corporation to purchase all or any part of an additional 50,000 shares of the Common Stock at the same price, such option to continue through December 31, 1949. The President stated that the terms and conditions of such proposed purchase had been set out in a written contract and the same was read and is as follows:

THIS AGREEMENT, entered into on this 2nd, day of December, 1944, by and between SPUR DISTRIBUTING CO., INC., a Delaware corporation with its principal office in Davidson County, Tennessee, hereinafter called "Seller", and EQUITABLE SECURITIES CORPORATION, a Tennessee corporation with its principal office in Nashville, Tennessee, hereinafter called "Buyer".

WITNESSETH:

WHEREAS, the Seller represents that it is validly organized and existing under the laws of the State of Delaware, and is authorized to issue Four Hundred Thousand (400,000) shares of Common Stock without par value, of

which there is presently outstanding and issued a total of One Hundred Forty Thousand (140,000) shares, One Thousand (1,000) of which outstanding shares are held by the Seller as Treasury Stock; and

WHEREAS, the Seller represents that its balance sheet annexed hereto, marked Exhibit "A" and made a part hereof, clearly sets forth its financial position as of the 31st day of October, 1944, and that there has been no material change in the position of the Seller's business and assets since said date; and

WHEREAS, the Seller desires to secure additional working capital through the sale of additional stock;

NOW THEREFORE, in consideration of the premises and the mutual covenants and undertakings herein set out, the parties hereto agree, as follows:

FIRST: Seller agrees that it will issue and sell, and the Buyer agrees that it will purchase and pay for, Twenty Thousand (20,000) shares of Common Stock of the Seller for a consideration of Thirteen Dollars and Thirty-seven Cents ($13.37) per share, representing the book value of said stock as of the 31st day of October, 1944. Said shares of stock shall be issued to the Buyer or in the name of its nominee and shall be delivered to the Buyer upon payment of the purchase price to the Seller.

SECOND: In consideration of the foregoing purchase of said Twenty Thousand (20,000) shares of Seller's Common Stock, Seller hereby grants to the Buyer an option to purchase all or any part of an additional Fifty Thousand (50,000) shares of the Seller's Common Stock at the price of Thirteen Dollars and Thirty-seven Cents ($13.37) per share, which option shall continue for a period of five (5) years and one month from the date hereof and shall terminate at midnight on the 31st day of December,

1949. Seller further agrees that it will upon demand of the Buyer deliver to the Buyer non-negotiable option warrants in such denominations as the Buyer may request, to evidence the option herein granted; such option warrants to be in form satisfactory to Seller and Buyer.

THIRD: Seller hereby agrees that it will forthwith deposit with THE AMERICAN NATIONAL BANK OF NASHVILLE, as Escrow Depository, in street delivery form, certificates for Fifty Thousand (50,000) shares of its Common Stock, said certificates to be in such number and in such amounts of stock as may be designated by the Buyer, with written instructions to said Escrow Depository in form satisfactory to the Buyer instructing and directing the said Escrow Depository to deliver to the Buyer during the option period any or all of said shares of stock upon the payment to the said Escrow Depository for Seller's account the aforesaid consideration of Thirteen Dollars and Thirty-Seven Cents ($13.37) per share.

In the event the Buyer shall fail to exercise its option to purchase with respect to all or any part of said shares of stock, said Escrow Depository shall, upon the termination of the option period, return such shares of stock as then remain in its hands to the Seller.

FOURTH: The Seller covenants that so long as the option granted to the Buyer is outstanding it will not declare any stock dividends, issue to its stockholders or others any rights to subscribe for shares of its stock, or change its capitalization without the consent of Buyer.

FIFTH: Seller agrees that during the option period for the purchase of additional stock by the Buyer as hereinbefore set out, no additional stock will be issued and sold by the Seller without first giving to the Buyer a thirty-day option to purchase its proportionate part of said new issue of stock, computed on the basis of both the stock herein purchased and optioned, upon the

SIXTH: Seller agrees to furnish a statement to Buyer certifying that the stock hereinabove described has not been offered to other purchasers, and Buyer agrees to furnish Seller with a statement certifying that it is purchasing said shares of stock for investment and not for resale or for the purpose of offering the same generally to the public. Seller further agrees to furnish to Buyer written opinion of Seller's attorneys, Messrs. Bass, Berry & Sims, of Nashville, Tennessee, certifying that said proposed issue, sale and option of said stock as herein set out is legal and authorized and that the terms, provisions and conditions of this contract have been legally adopted and approved by Seller through proper corporate action.

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals hereunto through their duly authorized officers, on the day and year first above written.

SPUR DISTRIBUTING CO., INC.,

By J. M. Houghland
President

Attest:

ALVER E. PETERSON
Secretary

EQUITABLE SECURITIES CORPORATION,

By BROWNLEE O. CURRY
President

Attest:

GEO. N. BULLARD
Secretary

The proposal as set out in the foregoing contract was discussed by all of the directors present at great length and in detail, and after such discussion it was unanimously:

RESOLVED, that the corporation issue and sell 20,000 shares of its Common Stock to Equitable Securities Corporation, of Nashville, Tennessee, for the consideration of $13.37 per share, for the purpose of securing additional working capital for the corporation, with the option of purchasing all or any part of an additional 50,000 shares of the Common Stock for the same consideration in accordance with the terms, provisions and conditions set out and contained in the proposed written contract, said additional 50,000 shares of the Common Stock to be issued in street form and deposited with The American National Bank of Nashville as Escrow Depository, subject to the exercise of the purchase option as set out in said contract; and

RESOLVED, that said offer of purchase made by Equitable Securities Corporation as set out in said contract, and all of the terms, provisions and conditions thereof, be and the same hereby is accepted and approved, and the President and Secretary of the corporation are authorized to execute said contract on behalf of the corporation and to take any and all steps as may be necessary and required to fully carry out the terms and provisions thereof.

The President then presented to the directors the option warrant required to be executed by the Company in the contract and the same was read to the directors, and on motion was unanimously approved and was ordered to be spread upon the minutes of the meeting, and was as follows:

1941

WARRANT

for

Subscription to Capital Stock

of

SPUR DISTRIBUTING CO., INC.

Incorporated under the Laws
of the State of Delaware.

This is to certify that the Bearer hereof is entitled to subscribe, in accordance with the provisions herein contained and subject to the limitation hereinafter set forth, to Fifty Thousand (50,000) Shares, or any part thereof, of the Common Capital Stock of SPUR DISTRIBUTING CO., INC. as constituted on the date of subscription at Thirteen Dollars and Thirty-Seven Cents ($13.37) per share at any time after the date hereof and on or before December 31, 1949. This Warrant, if not exercised, shall be void after December 31, 1949.

Such subscription may be exercised only by the surrender of this Warrant with the form of subscription which appears on the reverse hereof duly filled out and signed at the principal office of The American National Bank of Nashville, Escrow Depository, in Nashville, Tennessee, together with cash or current funds in payment of such subscription.

The title to this Warrant and all rights and interests represented hereby may be transferred and assigned by delivery merely in the same manner as a negotiable instrument payable to Bearer and the Company and its agents may treat the Bearer hereof as the rightful owner for all purposes, without inquiry as to the sources of title, provided however such transfer shall be subject to the terms and provisions of that certain agreement between the

Company and Equitable Securities Corporation dated December 2nd, 1944, and hereinafter referred to.

This Warrant is isued by the Company pursuant to an agreement dated December 2, 1944, between the Company and Equitable Securities Corporation, a copy of which agreement is on file in the principal office of the Company at Nashville, Tennessee, and may be inspected by the Bearer of this Warrant. The Company covenants that so long as this Warrant is outstanding it will not declare any stock dividends, issue to its stockholders or others any rights to subscribe to shares of its stock, or change its capitalization without the consent of Equitable Securities Corporation. No additional stock will be issued and sold by the Company prior to January 1, 1950, without first giving Bearer a thirty (30) day option to purchase all or any part of a proportionate part of the proposed new issue of stock computed on the basis of the stock then outstanding and the stock purchasable under this Warrant, upon the same prices, terms and conditions upon which such proposed stock is to be offered and sold.

As and when purchases of stock shall be made, the amount of which purchase shall be endorsed hereon by a suitable legend signed by an authorized officer or agent of the Company. This Warrant may be surrendered to the Company to be exchanged for similar Warrants in different denominations but for the same aggregate number of shares issuable thereunder as of the time of exchange.

This is the 2nd day of December, 1944.

SPUR DISTRIBUTING CO., INC.

By .....
President

The President then called the directors' attention to the fact that as presently constituted the By-Laws of the Company under Article V contain provisions authorizing the directors to appoint transfer agents and registrars

for the Company in the City of New York and elsewhere for the transfer and registration of the stock of the Company. He pointed out that pursuant to this authority the Company had previously appointed Chemical Bank & Trust Company as Transfer Agent and Bank of New York and Trust Company as Registrar in the City of New York and that such action required the corporation to pay a State transfer tax in addition to the Federal transfer tax on all shares of the Company's stock which were transferred by this means and also involved additional payments for the services of the Transfer Agent and the Registrar. The President stated that it had been suggested in the interest of economy that the corporation should discontinue the services of the Transfer Agent and the Registrar and should hereafter cause its stock to be issued direct by its officers at the home office of the Company in Nashville, Tennessee, thereby saving the New York transfer tax and the amount paid to the Transfer Agent and Registrar for their services. After a discussion of the matter it was unanimously:

RESOLVED, that Section 4 of Article V of the By-Laws of the corporation be and same hereby is repealed; and further

RESOLVED, that the services of Chemical Bank & Trust Company as Transfer Agent, and the services of Bank of New York & Trust Company as Registrar, in the City of New York be and the same are hereby discontinued, and the Secretary is instructed to notify said Transfer Agent and Registrar accordingly and to request them to return to the Company all certificates of stock, stock registers and other records of the Company, and to express to them the appreciation of the corporation for the services rendered to the corporation.

There being no further business, the meeting adjourned.

.....
Chairman

.....
Secretary

TELEGRAM—Paid

COPY

November 30, 1944

MASON HOUGHLAND
c/o SPUR DISTRIBUTING COMPANY
NASHVILLE
TENNESSEE

WITH REFERENCE TO AGENDA ON DIRECTORS' MEETING SCHEDULED DECEMBER SECOND, PURSUANT TO AUTHORITY VESTED IN ME YOU ARE ADVISED THAT NO ACTION IN RESPECT TO ISSUING STOCK WILL BECOME EFFECTIVE WITHOUT APPROVAL OF CUSTODIAN AND POSSIBLY THE COURT. YOU ARE FURTHER REQUESTED TO READ THIS TELEGRAM AT THE MEETING AND FORWARD TO THIS OFFICE COPY OF MINUTES OF DIRECTORS' MEETING.

JAMES E. MARKHAM
ALIEN PROPERTY CUSTODIAN

1945

Plaintiff's Exhibit 170

TELEGRAM

DECEMBER 29, 1944

JWC:fjp

J. M. HOUGHLAND, PRESIDENT
AND
ALVER E. PETERSON, SECRETARY
SPUR DISTRIBUTING COMPANY, INC.
FRANKLIN ROAD
NASHVILLE, TENNESSEE

IN VIEW OF REQUESTED POSTPONEMENT OF MEETING ORIGINALLY SCHEDULED FOR DECEMBER 27, 1944 TO JANUARY 13, 1945, I WISH AGAIN TO MAKE IT CLEAR THAT ACTION TAKEN ON OR ABOUT DECEMBER 2, 1944 IN ISSUING TO EQUITABLE SECURITIES CORPORATION SHARES OF COMMON STOCK OF SPUR AND GRANTING AN OPTION TO PURCHASE FURTHER SHARES, WAS CONTRARY TO MY ORDERS AND INSTRUCTIONS AND ILLEGAL AND VOID. YOU ARE DIRECTED TO MAKE NO DISPOSITION OF ANY OF THE PROCEEDS RECEIVED BY SPUR FROM EQUITABLE NOR SHALL ANY SUCH FUNDS BE IN ANY WAY COMMITTED. ANY EXPENDITURE OR COMMITMENT OF THESE FUNDS FOR THE ACQUISITION OF REAL OR PERSONAL PROPERTY OR OTHERWISE WOULD BE ILLEGAL AND WILL SUBJECT PARTIES TO PENALTIES PROVIDED BY LAW AND OTHER ACTION.

JAMES E. MARKHAM
ALIEN PROPERTY CUSTODIAN

1946

Plaintiff's Exhibit 171

TELEGRAM

December 20, 1944

EQUITABLE SECURITIES CORPORATION
NASHVILLE, TENNESSEE

RE ACTION OF SPUR DISTRIBUTING CO., INC. IN PURPORTEDLY ENTERING INTO A CONTRACT WITH YOU DATED DECEMBER 2, 1944, CONCERNING THE ISSUANCE OF CERTAIN STOCK AND OTHER MATTERS YOU ARE ADVISED THAT SUCH PURPORTED ACTION WAS CONTRARY TO THE ORDER AND INSTRUCTION OF THE ALIEN PROPERTY CUSTODIAN AND CONSEQUENTLY IN VIOLATION OF APPLICABLE PROVISIONS OF LAW AND SUBJECT TO THE PENALTIES THEREIN PROVIDED.

JAMES E. MARKHAM
ALIEN PROPERTY CUSTODIAN

Form TFE-1 (Revised 8-1-41)
TREASURY DEPARTMENT
Office of the Secretary

APPLICATION FOR A LICENSE TO ENGAGE IN A FOREIGN EXCHANGE TRANSACTION, TRANSFER OF CREDIT, PAYMENT, EXPORT OR WITHDRAWAL FROM THE UNITED STATES, OR THE EARMARKING, OF GOLD OR SILVER COIN OR BULLION OR CURRENCY, OR THE

1947

TRANSFER, WITHDRAWAL OR EXPORTATION OF, OR DEALING IN, EVIDENCES OF INDEBTEDNESS OR EVIDENCES OF OWNERSHIP OF PROPERTY.*

(To be executed and filed in triplicate with the Federal Reserve Bank for the district or with the Governor or High Commissioner of the territory or possession of the United States in which the applicant resides or has his principal place of business or principal office or agency. If the applicant has no legal residence or principal place of business or principal office or agency in a Federal Reserve district or such territory or possession the application should be filed with the Federal Reserve Bank of New York or the Federal Reserve Bank of San Francisco.)

To the Secretary of the Treasury
Washington, D. C.

Sir:

I

In accordance with Executive Order No. 8389 of April 10, 1940, as amended, regulating transactions in foreign exchange, etc., and the Regulations and Rulings issued thereunder, the undersigned hereby applies for a license to execute the transaction described below:

A. (1). The name of the applicant is.....
Spur Distributing Co., Inc.

(2) Applicant resides at or, in the case of a corporation, partnership, association or other organization, has its principal place of business at:

8th and Bradford Street (Street) Nashville (City) Tennessee (State)
Davidson (Country)

* All definitions appearing in Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations and Rulings issued thereunder shall apply to the terms employed herein.

(3) Applicant is and has been a citizen of see below since .....
(Month) (Day) (Year)

(4) The nationality** of the applicant is .....

(5) Since April 1928 the applicant has been engaged in the business of .....
Retail distribution of Gasoline-oils-Petroleum Products
(State nature of business)

3. The applicant desires a license in order to:

(State in detail the nature, purpose and amount of the transaction, and the name, address, nationality** and extent of interest of every party, including the applicant, involved or interested in the transaction.)

Pay annual dividend, not to exceed $3.00 per share, on one hundred and thirty-nine thousand (139,000) shares. Of this seventy-three thousand and thirty-nine (73,039) are owned by Fritz Von Opel and are outstanding in the name of Houvis & Company, Nashville; nominee. Pay the proceeds of the dividend due Mr. Von Opel to a blocked account in his name, as a "national" of Lichtenstein, in the American National Bank of Nashville, Tennessee.

The Company was incorporated in Delaware in 1928. The Company does business only in the United States. About 51% of the stock of the Company is controlled by Fritz Von Opel, who is a national of Lichtenstein.

Applicant's No. .....

SPUR DISTRIBUTING CO., INC.
(Applicant)

By H. D. HINES
Executive Vice President.

** In the case of a corporation, partnership, or association, give country in which organized and indicate the approximate percentages of stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of such organization owned or controlled, directly or indirectly, by a blocked country or one or more nationals thereof.

Plaintiff's Exhibit 177

OFFICIAL RECORD OF LIECHTENSTEIN STATUTES, YEAR 1934, NUMBER 1, JANUARY 10, 1934

STATUTE

About the Acquisition and the Loss of State Citizenship

I give my consent to the following Resolution of the Parliament made in Its Session of November 14, 1933:

#1

Generalities

The acquisition and the loss of State Citizenship will be governed in the future—besides by treaties—exclusively by the provisions of this Statute.

#2

Every state citizen must be a citizen of a municipality of the principality of Liechtenstein except the members of the princely house.

#3

Acquisition of State Citizenship

State citizenship can be acquired (a) by birth or legitimization (b) by marriage (c) by naturalization.

#4

(a) *By birth*

Legitimate children of Liechtenstein state citizens get their state citizenship by birth. Illegitimate children of Liechtenstein citizens will be held like legitimate children if they have to be regarded as legitimates because the restriction as to marriage has been cancelled or if there is faultless ignorance of one of the spouses or if they have become legitimized by subsequent marriage or by the favor of the Prince. (Para. 160-162 of the General Civil Code).

Illegitimate children have the Liechtenstein state citizenship as long as the mother has the Liechtenstein state citizenship and as long as the mother does not lose the Liechtenstein citizenship by subsequent marriage with the father of the illegitimate child so that the child becomes legitimized by subsequent marriage. If a foreign mother of an illegitimate child marries its alleged Liechtenstein father, the child is recognized as a Liechtenstein citizen only if paternity is proved.

#5

(b) *By marriage*

A foreign female gets the Liechtenstein state citizenship by marriage with a citizen without special act of naturalization, reserved P. 28 of the Municipality Statute of May 24, 1864 (Official Record of Liechtenstein Statutes #4).

Similarly the wife of a foreigner to whom state citizenship is granted acquires state citizenship if the marriage has not been divorced or separated by Court or declared invalid.

#6

(c) *By Naturalization*

The state citizenship may be granted to foreigners only:

a) If they have their full legal capacity under the law of the state of their nationality; if they lack legal capacity it can be replaced by the consent of the father or the guardian.

b) If they prove that they will be accepted as a citizen in a municipality of Liechtenstein in case the government grants the state-citizenship.

c) If they prove that they will lose their previous citizenship by acquiring Liechtenstein citizenship; but if under the law of the state of their origin, they keep their previous citizenship even if they acquire a new citizenship, the government may waive this requirement. The princely government may dispense with the proof for dismissal from the previous citizenship, but in these cases a person will not get diplomatic protection by Liechtenstein authorities in so far as the relation to the state of previous nationality is concerned.

d) If they have had their permanent residence in the territory of the principality of Liechtenstein for at least three years. But this condition has not to be fulfilled under extraordinary circumstances that ask for special consideration.

#7

The application for granting state citizenship has to be addressed to the State Executive with the following enclosures:

a) The birth certificate of the applicant and eventually of his wife, certificate of marriage, the death certificate of pre-deceased spouse, the birth certificate of legitimate minor children. Instead of these documents, a family certificate can be filed if it is drawn by competent authority and includes the necessary information in a notarized form;

b) The original or certified copy of a final judgment if the applicant has been divorced or separated by court or if his marriage has been declared invalid.

c) A passport, a citizenship certificate or a similar certificate drawn by a competent authority about the citizenship of the applicant and the members of his family;

d) The proof of permanent residence within the principality of Liechtenstein;

e) Certificate of good reputation issued by the competent authority of the place of residence. The certificate has to include also a statement about the wife and the minor children of the applicant if they have passed 14 years. If these children live within another community a special certificate of good behaviour has to be filed for them;

f) Statements about the property and income by banking statements, tax assessments, etc.;

g) By applicants who do not have their permanent residence within the country: a statement that they made an agreement about their tax duty with the Treasury Department after the Tax Commission of the future home municipality has been heard;

h) An original or certified copy of the nobility certificate if the applicant intends to keep his own nobility or asks for its recognition;

i) Certificate about religious denomination.

#8

The recognition of nobility does not give any privilege.

#9

If the application is not signed by the applicant himself but by an attorney, the attorney has to show a recognized power of attorney.

#10

Naturalization fees

The applicant has to make a payment for the grant of the state citizenship. This payment is at least half of the purchase price (Einkaufsentgelt) that the applicant had to pay to a Liechtenstein municipality for the right to be admitted in the community of citizens (Aufnahme in den Heimatverband); the amount will be fixed by the princely executive. The princely executive can reduce the amount of the payment under special circumstances. A reasonable special payment will be fixed for the continuation and recognition of the nobility rights of the applicant. These payments have to be made to the princely treasury before the certificate of state citizenship is delivered.

#11

Before state citizenship is granted, the relations of the applicant to his previous national state and his personal and family conditions have to be investigated. Naturaliza-

tion is excluded if these relations and conditions are so that naturalization may bring any disadvantages to the state.

#12

After the Government has examined the application, including the enclosures, and gets satisfactory information about the applicant, it has to bring the application before the Parliament. If the Parliament consents to the application, the executive has to ask the Prince to grant the state citizenship; the Prince has exclusive right to grant State citizenship except in the case of paragraph 15.

Nobody has a claim that state citizenship should be granted to him.

#13

The fact that through the grant of state citizenship also a municipal citizenship is acquired, does not give any claim for the use and the profits out of the estate of the municipality.

#14

It is within the jurisdiction of the executive or an authority empowered by him to administer the citizenship oath after the state citizenship has been granted. The citizenship oath has only to be taken by male persons of full age.

#15

Re-Admission

The executive is empowered to re-admit gratuitously persons in their previous municipal and state citizenship with the consent of the citizen meeting of the municipality where these persons were citizens previously if they have

domicile in the country or if they have been forced by special circumstances to renounce their state citizenship provided they make application for it within ten years after they return to Liechtenstein. Paragraph 7 (a)-(f) and paragraph 13 are applicable accordingly.



#16

Honorary Citizenship

If foreigners have special merits for promoting the cultural or economic interest of the state or a municipality especially by increasing opportunities for gainful employment for the population or if they have contributed in a special way to the increase of the income of the state or municipality, the prince may upon a suggestion of the princely executive grant the honorary state citizenship without a municipal citizenship; similarly a municipality may grant municipal honorary citizenship with the consent of the prince and the executive without granting a state citizenship.

#17

Loss of State Citizenship

The state citizenship is lost:

a) By express or tacit waiver;

b) By marriage;

c) By withdrawal.

#18

a) By express waiver

Male and female state citizens can waive their state citizenship if

a) They are of full capacity under the laws of the country whose nationality they possess or try to acquire, and

b) If they prove that they acquired or have been promised the state citizenship of another state for themselves and eventually for their wife and their minor legitimate children.

The application has to include official certificates about the birth and the sex of the minor legitimate children. Persons that have a guardian or curator must file the application by their legal representative.

The certificate stating the loss of citizenship has to be issued by the princely executive.

If married citizens waive their citizenship the waiver is applicable also to the wife and to the legitimate minor children.

#19

b) By tácit waiver

Any person who has acquired citizenship in another state under the statutes of that state and lets pass thirty years from the day of its acquisition without renewing his citizenship certificate waives silently his state citizenship. The waiver includes also the citizenship of the wife, the children and the descendants.

#20

c) By marriage

The wife loses her previous state citizenship by marriage with a foreigner.

#21

d) By withdrawal

The princely executive can withdraw the state citizenship granted to a foreigner within five years since the acquisition if it is found that the conditions for naturalization as prescribed by the statute were not fulfilled. However, the state citizenship can be withdrawn at any time if it was acquired in a fraudulent way.

The fees paid under paragraph 10 of the statute will not be paid back.

#22

The municipal citizenship is lost together with the loss of state citizenship.

#23

Final Provisions

This statute supersedes the statute of March 28, 1864 L.G.Bl. #3, the statute of July 27, 1920 L.G.Bl. #9 and paragraph 72 of the Final Provisions of the Code on Persons and Corporations of January 20, 1926 L.G. Bl. #4.

#24

This statute is not declared urgent and becomes effective on the day of its publication.

Vaduz, January 4, 1934

/s/ Franz

/s/ Dr. Hoop

Princely President

1958

Plaintiff's Exhibit 178

THEODORE HOFFACKER & CO.

56 Pine Street
New York

August 22, 1933.

Mr. Fritz von Opel,
56 Pine Street,
New York City.

Dear Fritz:

Re: *Spur Distributing Company*

The operations of the Spur Company for the first three months of the year were unsatisfactory from the profit point of view. The situation, however, changed for the better during the months of May, June and July, resulting in a net profit for the seven months period to July 31st of $73,293.80, to which July contributed $38,263.59. The exceptionally good showing in July is due to the rise in gasoline prices from which the Company benefited substantially. The balance sheet position is excellent, showing total current assets of $447,909, against current liabilities of $133,902; cash alone accounted for $299,231. The July report is attached.

Regarding our relationship with Mr. Houghland, would say that it appears greatly improved; still I cannot really say that Mr. Houghland's loyalty is all it should be. He seems to harbor within him a grudge against John Cole and apparently does not like to be watched too closely. As you know, I placed our own man in the Company as Assistant Treasurer, and Mr. Houghland appears not to be any too friendly with him. Under all circumstances, we must be prepared to meet any issue precipitated by him. I have not been in Nashville since last Fall, however, believe it

is advisable that you and I go there during your present sojourn in the United States.

Re: *Oil Refineries, Inc.*

The operations of Oil Refineries, Inc. are very satisfactory. Profits are currently running at the rate of $17,000 per month, after all charges. I felt it necessary to curb Mr. Crittenden in investing too much of the earnings in additional plant and equipment, as you will see from the attached copy of a letter sent to him. I do feel that his plant should by now be in such condition that profits can be retained in cash, and I will see to it that no new plant installations are made without my personal approval.

Re: *Oil Production, Inc.*

We have been negotiating for several months with one interest for about 8,000,000 barrels oil reserves, have, however, not yet been able to come to a definite agreement as to price and terms. After the consummation of this deal, our program will have been completed. I expect to receive from the Company a statement of its present condition, having written for it about ten days ago.

Re: *Harvard Brewing Company*

I visited the Harvard Brewing Company together with Walter Blumenthal the first time, end of May. At that time it occurred to me that Mr. Lange was overwhelmed with work and unable to keep abreast of the task. I expressed my apprehensions to Mr. Blumenthal and received from him the assurance that Mr. Lange is a very capable man and in his opinion fully able to cope with the problems. Still I insisted on having our auditors go to the plant in order to install an accounting system. The auditors reported to me that Mr. Lange could not come to speedy decisions. About the middle of June, I again visited the plant

and was not at all satisfied with the way things were done. I was then informed that the Company would commence making delivery of beer on July 8th. Expecting disappointment, I went to Lowell on July 8th. By July 10th failure was admitted by the then management, so I stayed right there taking things in my own hand. After straightening out the worst problems, I arranged for a directors' meeting on July 15th, at which time I was elected Chairman of the Board of the Massachusetts Corporation and in this office the Company's chief executive officer. I returned to New York for a week to straighten out my own office matters, and immediately left for Lowell once more to organize the Company's personnel, to lay down business policies to be pursued, and to take complete charge of the operations. Attached you will find my Organization Plan which was ratified by the Directors of the Company on August 11th. You will also find attached statement of the first three months' operations showing an operating profit of $9,043.68, and a surplus, after all charges, of $2,212.96. I prepared a budget and plan of performance, with which operations since August 1st are in line. My budget plan indicates an annual net profit of $660,000, and an attainable net profit of $1,350,000. As you will see from the July statement, the Company can break even with only 25,000 barrels sales per annum based upon present prices. If you consider that the rated capacity after reconditioning of the plant is completed, is 520,000 barrels, you will agree that all elements for a remarkable money maker are available.

In view of these factors and my full conviction of prohibition repeal being a foregoing conclusion before December 6, 1933, I contracted to purchase 100,000 shares of Harvard Treasury Stock at $2.50 per share. First payment has been made on August 21st in the amount of $100,000.

The Company is now fully financed and will have enough money to recondition the brewery to its full capacity, and to finance its current operations with ease. When

fully equipped, the Company will have acquired its plant at a cost of less than $2.50 per barrel installed capacity compared with a cost of $8.50 for the industry as a whole.

I desire to mention here that a cash offer was made for the plant in the condition of four weeks ago of $2,000,000, which is equivalent to $5.00 per share of the stock then outstanding. This offer was turned down in view of the fact that the property, when fully operating, should be worth conservatively $6,000,000. Your proportion of this value would be 31% or $1,860,000 for a total investment of $320,000.

I do believe that beginning October, 1934, the Company can pay dividends at the rate of 60¢ per share, while earning at the rate of $1.50 per share. I shall use all my personal effort to realize this goal.

Faithfully yours,

/s/ Ted

Defendant's Exhibit 1

September 9, 1931

To the
Revenue Office (Finanzamt)
Wiesbaden

My son, Fritz von Opel, who for some time has been living abroad and is no longer a resident of Germany, has an option to purchase shares of the Overseas Finance Company Ltd.

In the option contract my son assumed certain obligations. These obligations, particularly those to pay the purchase price of about sfrs. 375,000.00, and to grant a credit of sfrs. 3,500,000.00 were guaranteed by myself. Apart

from this I myself am not interested in the company in any way. Therefore I do not consider the investment subject to the obligations to report in accordance with the emergency decree of August 23, 1931.

It is only as a matter of precaution that I am hereby reporting the facts. In my property tax return no mention is made of the matter, since according to my opinion no investment has been made and since the guaranty obligation was not entered into on my part until after January 1, 1931.

Very sincerely yours,

Defendant's Exhibit 2

(Enclosure attached to the report of Geheimrat Dr. Wilhelm v. Opel, Wiesbaden, of September 9, 1931.)

Application for release and reasons therefore:

The amount serves to secure a guaranty obligation. My son Fritz v. Opel, Antwerp, has concluded an option contract with Adler & Co., Zuerich, on shares of the Oversea Finance Corporation. In this connection he is obliged, upon exercise of the option or delivery of the shares to grant a credit of sfrs. 3,500,000.00, in addition to the price of the shares, which will amount to another sfrs. 375,000.00 approximately. This contract was guaranteed by myself. There is no doubt that the option will be exercised, respectively that the party to the contract will make use of his contractual rights. I am considering myself bound by the contract and therefore will not be authorized to dispose of the amount deposited with the Schweizerische Kreditanstalt in Zuerich, even after the period of the time deposit will have expired.

The company, whose shares my son acquires, is to utilize several patents and participations, particularly patents issued to my son himself. From this transaction my son expects advantages which in turn will be beneficial to German economy.

I assumed the guaranty obligation because I wanted to contribute to the efforts of my son to create for himself a vocation corresponding to his tastes and capabilities. Through persistent work my son has developed some new technical ideas and inventions. As a result he owns several German and foreign patent-rights which doubtlessly seem to offer prospects. The problem now is to exploit these inventions and patent-rights commercially and to acquire additional and supplementary patent-rights etc., for which purpose considerable capital is needed.

For your information there is enclosed copy of a letter containing a confirmation of the agreements by the party to the contract.

[3,105½

315,000
3.5

3,815,000]

Defendant's Exhibit 3

(Translated from a photostatic copy of a carbon copy of the German original.)

October 28, 1931.

Firma Adler & Co.,
Kommandit Aktien-Gesellschaft,
Zuerich.

Dear Sirs,

Since up to the present time I have not heard from my son with regard to the exercising of his option and since

I am convinced that in view of the extremely difficult foreign exchange situation he will renounce the right to exercise his option, I am eager to approach you with the request that you too, renounce the right to exercise your option.

Although, in fulfilment of the promise given to my son, I have undertaken the guaranty for his governments towards you and for this purpose made available at the Schweizerische Kreditanstalt in Zuerich the sum of sfrs. 3,500,000.00—which fact will show you that I faithfully undertook to keep my promise—an entirely new situation has arisen in Germany due to the emergency legislation, which makes it absolutely impossible for me to dispose freely of the amount of foreign exchange in question. This is incontestably a case of force majeur, so that even in case you should exercise the option yourselves, you would, therefore, not be able to enforce the payment I guaranteed you, since in that case I would make myself liable to punishment in my country, and since, moreover, it is doubtful if my government will allow me to continue to retain the amount held in readiness in foreign exchange.

However, since under no circumstances do I want to get into an unpleasant controversy with you and since I am firmly convinced that you will fully appreciate the embarrassing situation in which I find myself, you will not consider it unreasonable that I am asking you to confirm to me by return mail that you, too, are ready definitely to renounce the right to exercise the option which was granted to you.

I wish to add, that I shall naturally be willing as I was before, to undertake to its full extent the guaranty I gave as soon as circumstances improve and I regain the right to dispose freely of my accounts.

Asking you again not to regard my request to renounce your right of option as resulting from bad faith, but as brought about by the pressure of circumstances I am

Yours very truly,

Defendant's Exhibit 4

Zuerich, December 24, 1931

Schweizerische Kreditanstalt
Zuerich

Rechtsbureau
(Legal Department)

Herrn Dr. Ing. Wilhelm von Opel,
Geheimer Kommerzienrat,
Ruesselsheim am Main

We beg to inform you that Mr. Fritz von Opel, of Braschaed near Antwerp, represented by Dr. Eugen Meier, attorney-at-law, of Liestal, has, on account of an alleged claim against you, obtained a preliminary attachment by summary proceedings before a one-judge-court, whereupon the Betreibungsamt ((collecting office)) Zuerich I, attached your account with us up to an amount of

Fr. 3,500,000.00.

As of December 22 we have transferred this amount to a newly opened preliminary attachment account. No information has been given to the Betreibungsamt.

We assume you will take the necessary steps yourself to safeguard your interests, and remain

Yours truly,

Schweizerische Kreditanstalt

(sgd.) Folkart

(sgd.) by power of procuration Frey.

Defendant's Exhibit 5

Zuerich, November 30, 1931

Adler & Co., Banquiers
Kommandit-Aktien-Gesellschaft

Herrn Geheimrat Wilhelm von Opel,
Wiesbaden.

We received your letter of October 28, of this year and are referring to the conversation we had with Mr. Fritz von Opel on the 28th inst.

As we explained to Mr. Fritz von Opel in detail, it is quite impossible for us to renounce our seller's option to the shares of Overseas Finance Corporation, since we were absolutely convinced that the deal would go through in one way or another, and in expectation thereof had entered into commitment to various parties. Moreover, the time limit stipulated for the exercise of our option does not expire until December 31 of this year and we regret to be unable to make any definite declaration at the present moment.

Please be convinced that we fully appreciate the difficult position in which you find yourself, but on the other hand we hope that you too will understand that, owing to the prevailing circumstances which we explained in detail to Mr. von Opel, we cannot comply with the request expressed in your above mentioned letter.

We must rather depend entirely upon Mr. Fritz von Opel for the fulfilment of the agreement; he is the only other party to our contract and the difficulties referred to in your letter do not apply to him.

We beg to remain

Yours very truly,

ADLER & Co.
(two signatures illegible)

Defendant's Exhibit 6

Wiesbaden 199/196.22.1050 Pl. 50 October 23, 1931

N L T Mister Sloan General Motors Corporation
New York City.

Wish to confirm the matters discussed with Mr. Mooney stop Personally should like to continue connection and seriously believe that it is more in the interest of your business here if I retain Opel shares instead of General Motors shares stop Propose following basis: I retain 50 per cent of my Opel shares until at least January 1, 1936 stop I am entitled to request you then to buy my shares at the price of RM 29,000.00 a share as provided in present agreement regarding the shares stop You will guarantee however the monetary exchange basis to the extent that the stipulated amount payable on January 1, 1936, is not less than Goldmarks 26,500.00 a share, computed at the legal rate of ..... etc. You however guaranty currency by agreeing that amount payable to me on January 1, 1936 will be no less than twenty six thousand five hundred Goldmarks per share on statutory rate of one Goldmark equal to one to thousand nine hundred seventieth kilo refined gold stop As explanation "were I to sell today to you I would now receive approximately same amount that I request you to guarantee as of January 1, 1936." Should you decide at any time prior to January 1, 1936 to reduce share capital of Opel, such reduction should not affect the total amount payable to me stop My son Fritz is authorized to make an agreement on that basis. Best regards.

(sgd.) WILHELM VON OPEL

Defendant's Exhibit 7

October 30, 1931

Wilhelm von Opel
Wiesbaden
Germany

Your proposal concerning one half is acceptable to us stop Your son Fritz thinks he would like further to discuss subject with you stop Will leave on SS Europe arrival Wiesbaden November ninth

(sgd.) SMITH

Defendant's Exhibit 8

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT,

Plaintiff-Appellant,

—against—

WALTER T. ROSEN, HARRY B. LAKE, PAUL M. ROSENTHAL, HENRY MARCH, and EDWARD E. THALMANN and ALEXANDER B. SIEGEL, as Trustees of the Estate of Ernest Thalmann, Deceased; and GIRGINIA M. ROSENTHAL, PAUL M. ROSENTHAL, JOHN ROSENTHAL, SIDNEY BACHARACH, and FREDERICK M. HEIMERDINGER, as Executors of the Estate of Moritz Rosenthal, Deceased; Co-partners doing business as LADENBURG, THALMANN & Co., and FEDERAL RESERVE BANK OF NEW YORK,

Defendants-Appellees.

TRANSCRIPT OF RECORD

PRELIMINARY STATEMENT

This suit was commenced by the service of an equity subpoena and the bill of complaint on the defendants on June 15, 1935. The parties to this suit are and always have been as follows: The plaintiff, Uebersee Finanz-Korporation Aktien Gesellschaft. The defendants, Walter T. Rosen, Harry B. Lake, Paul M. Rosenthal, Henry March; and Edward E. Thalmann and Alexander B. Siegel, as Trustees of the Estate of Ernest Thalmann, deceased; and Virginia M. Rosenthal, Paul M. Rosenthal, John Rosenthal, Sidney Bachrach, and Frederick M. Heimerdinger, as Executors of the Estate of Moritz Rosenthal, deceased; co-partners doing business as Ladenburg, Thalmann & Co., and Federal Reserve Bank of New York. The bill of complaint was filed June 15, 1935. The motion of the defendant Federal Reserve Bank of New York to dismiss the bill was filed June 18, 1935. That motion and the plaintiff's motion for a preliminary injunction were disposed of by Honorable Francis G. Caffey, United States District Judge. The order denying the plaintiff's motion for a preliminary injunction was entered July 16, 1935. The order dismissing the bill as to the defendant Federal Reserve Bank of New York was entered July 15, 1935. The appeal was taken July 20, 1935, and allowed on July 22, 1935.

BILL OF COMPLAINT

DISTRICT COURT OF THE UNITED STATES,
Southern District of New York.

Ueberseee Finanz-Korporation Artien Gesellschaft,
Plaintiff,

—against—

Walter T. Rosen, Harry B. Lake, Paul M. Rosenthal, Henry March, and Edward E. Thalmann and Alexander B. Siegel, as Trustees of the Estate of Ernest Thalmann, Deceased; and Virginia M. Rosenthal, Paul M. Rosenthal, John Rosenthal, Sidney Bacharach, and Frederick M. Heimerdinger, as Executors of the Estate of Moritz Rosenthal, Deceased; Co-partners doing business as Ladenburg, Thalmann & Co., and Federal Reserve Bank of New York,

Defendants.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York Sitting in Equity:

The plaintiff above named brings this, its bill of complaint, against the above named defendants, and respectfully shows unto this Honorable Court, upon information and belief, as follows:

1. The plaintiff is and at all times since 1922 was a corporation duly organized and existing under the laws of the Confederation of Switzerland, and is therefore a citizen and resident of Switzerland. It has not and never has had any place of business or agency therefor in the United

States, and it does not and has never carried on business therein.

2. The defendants Walter T. Rosen, Harry B. Lake, Paul M. Rosenthal and Henry March are all citizens of the United States and of the State of New York and actual residents of the City and County of New York, except the defendant Rosen, who is an actual resident of the County of Westchester. The defendants Virginia M. Rosenthal, Paul M. Rosenthal, John Rosenthal, Sidney Bachrach and Frederick M. Heimerdinger are the Executors of Moritz Rosenthal, deceased, who was a citizen of the United States and of the State of New York and an actual resident of the City of New York and County of Bronx at the time of his demise. On information and belief, the Surrogate's Court in Bronx County heretofore duly admitted to probate the will of said Moritz Rosenthal as his last will and testament and appointed the defendants Virginia M. Rosenthal, Paul M. Rosenthal, John Rosenthal, Sidney Bachrach and Frederick M. Heimerdinger as executors of the goods and chattels of said decedent, and they thereupon duly qualified as such, and have ever since been acting as such. The defendants Edward E. Thalmann and Alexander B. Siegel are citizens of the United States; the defendant Edward E. Thalmann is a citizen and resident of the State of California, and the defendant Alexander B. Siegel is a citizen of the State of New York and a resident of the County of New York; said defendants Thalmann and Siegel are the Trustees of the Estate of Ernest Thalmann, deceased, who, at the time of his death, was a citizen of the United States and of the State of New York, and an actual resident of the State and County of New York. The will of said Ernest Thalmann, deceased, was heretofore admitted to probate in the Surrogate's Court in New York County, and said Edward E. Thalmann and Alexander B. Siegel, being so named Trustees in said will, thereafter duly

qualified as such, and have ever since been acting as such Trustees.

At all the times hereinafter mentioned and now all defendants other than the defendant Federal Reserve Bank of New York were copartners doing business as such under the firm name and style of Ladenburg, Thalmann & Co. in the city and county of New York.

3. The defendant Federal Reserve Bank of New York is and at all the times hereinafter mentioned was a corporation duly organized and existing under the laws of the United States, with its place of business and residence in the city and county of New York.

4. On or about February 27, 1933, the plaintiff duly acquired for use in its business gold coins of the United States known as "double eagles" of a face amount of $1,250,000. On or about March 2, 1933, the plaintiff delivered to the defendants other than the defendant bank the said gold coins in bags, to be stored by said individual defendants as warehousemen for account of the plaintiff, and to be returned forthwith on demand; and the said individual defendants then and there received the same, promised and agreed to hold the said bags of coin on said terms, and to return the same to the plaintiff on demand. Since March 2, 1933, the said bags of gold coins have been and remained in the care, custody, possession and control of the said individual defendants as aforesaid, and they still are and remain in their care, custody, possession and control.

5. On June 14, 1935, the plaintiff duly demanded of said individual defendants the return and possession of said bags of gold coins, but the said individual defendants wholly failed and refused to return the same.

6. The said individual defendants threaten, and if not restrained by this Court will, forthwith turn over all of the said bags of gold coins to the defendant bank for account of the Treasurer of the United States. The individual defendants claim that they are obligated to do so pursuant to the direction of the Secretary of the Treasury of the United States. If that course be pursued, the defendant bank will not hold the said gold coins for the plaintiff, but solely for the Treasurer of the United States; and it is the professed intention of said defendant bank and said Treasurer to pay to the plaintiff for said gold coins not more than the dollar face amount of said gold coins, notwithstanding the fact that it is the purpose and intent of said Treasurer to utilize said coins so as to realize therefrom a sum in excess of $2,100,000.

7. The said gold coins have a value in Switzerland and in countries other than the United States, in which the plaintiff has investments or does business, in excess of two million one hundred thousand dollars. The said gold coins were acquired by the plaintiff in contemplation of that larger value and for use in its business at least to that extent; and the plaintiff's plans for business development and its business commitments were made accordingly. If the plaintiff be not now permitted to have and use the said gold coins, it will suffer large loss of profits and large damage in its business, the exact amount whereof however cannot be ascertained or measured, in that it will not be able to carry out its said plans, nor to fufill its said commitments, nor to earn large profits and avoid large loss. The individual defendants have had notice of and been cognizant of all the foregoing at all times since March 2, 1933.

8. The plaintiff, not being a person subject to the jurisdiction of the United States, is not and cannot be required by law to surrender the said gold coins to the Treasurer

of the United States or to the defendant bank for his account. Heretofore the plaintiff made application to the Secretary of the Treasury of the United States for a license to transport said gold coins from the possession of the individual defendants to the defendant Federal Reserve Bank to be by it credited to the account of Banque Nationale Suisse, the Central Bank of the Confederation of Switzerland for the plaintiff's account, but said application was thereafter arbitrarily and illegally denied. The plaintiff is entitled under the law to have the defendant Federal Reserve Bank hold said gold coins when delivered to it, for the plaintiff's account, or the account of said Banque Nationale Suisse, or otherwise made available for its uses and purposes to the fullest extent possible either here or abroad.

9. The defendant bank intends and threatens, if it receives said gold coins, to transfer the same to the Treasury of the United States and thus to place the same out of reach of the plaintiff, and it does not intend to receive or hold any of said gold coins for the account of the plaintiff or for the account of said Banque Nationale Suisse.

10. The plaintiff has no adequate remedy at law. The remedy of damages in conversion would not be adequate, because it would award to the plaintiff only the value of said gold coins in New York City, and thus deprive the plaintiff of the said larger foreign value thereof, in contemplation of which the said gold coins were acquired by it for its business purposes as aforesaid, and which larger value it requires in order to realize large profits, avoid large damage and fulfill its commitments. The remedy of replevin is not practically available to the plaintiff, because it cannot give a bond in twice the value of the gold coin, as is required by law in order to seize and replevy the

gold coins in time to prevent the said individual defendants from surrendering the same to the defendant bank.

11. This is a suit of a civil nature and presents a controversy between an alien corporation and citizen and citizens of the United States. The matter in controversy exceeds the sum of $3,000 in value, exclusive of interest and costs. This suit is brought in good faith and is not a collusive one to confer on a court of the United States jurisdiction of a case of which such court would not otherwise have jurisdiction.

WHEREFORE the plaintiff prays that the Court direct the said individual defendants to turn over to the plaintiff or its designee the said gold coins forthwith; or, if the same have heretofore passed into the control of the defendant bank, that the Court direct the said defendant bank to turn over to the plaintiff or its designee the said gold coins forthwith; that the plaintiff have such other and further relief in the premises as to the Court may seem just and that it recover of the defendants the costs and disbursements of this action.

The plaintiff further prays that it be granted a restraining order and preliminary injunction, pending the final hearing and decision of this cause, whereby the said defendants, their agents, servants, officers, and employees, and each and every of them, be enjoined and restrained from transferring, delivering, paying over or otherwise disposing of, the aforesaid bags of gold coins to any person, firm, body or corporation other than the plaintiff until the further order of this Court.

And the plaintiff further prays that a writ of subpoena issue herein directed to the above named defendants and each and every of them, commanding them on a day cer-

tain to appear and answer this bill of complaint, but not under oath, an answer under oath being hereby waived.

ISIDOR J. KRESEL,
Solicitor for Plaintiff,
Office & P. O. Address,
15 Broad Street,
Borough of Manhattan,
City of New York.

ISIDOR J. KRESEL,
of Counsel for Plaintiff.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ISIDOR J. KRESEL, being duly sworn, deposes and says:

I am the attorney for the Uebersee Finanz-Korporation Aktien Gesellschaft, the plaintiff herein, which is a corporation created by and existing under the laws of the Confederation of Switzerland. The foregoing bill of complaint is true to my knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason why this verification is not made by the plaintiff is that it is a foreign corporation and none of its officers or agents is within the United States or the County of New York in which County I have my office. The grounds of my belief as to all the matters in the foregoing complaint not stated upon knowledge are documents in my possession

made by persons having knowledge of the facts and statements made to me by the plaintiff's former attorneys.

ISIDOR J. KRESEL.

Subscribed and sworn to before me
this 15th day of June, 1935.

WILLIAM PEYTON MARIN,
Notary Public,
Kings Co. Clk's No. 753, Reg. No. 7380,
N. Y. Co. Clk's No. 965, Reg. No. 7M583,
Commission expires March 30, 1937.

(Seal)

ORDER TO SHOW CAUSE.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

E. 80-319.

UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT,

Plaintiff,

—against—

WALTER T. ROSEN, HARRY B. LAKE, PAUL M. ROSENTHAL, HENRY MARCH; and EDWARD E. THALMANN and ALEXANDER B. SIEGEL, as Trustees of the Estate of Ernest Thalmann, Deceased; and VIRGINIA M. ROSENTHAL, PAUL M. ROSENTHAL, JOHN ROSENTHAL, SIDNEY BACHARACH, and FREDERICK M. HEIMERDINGER, as Executors of the Estate of Moritz Rosenthal, Deceased; Co-partners doing business as LADENBURG, THALMANN & Co., and FEDERAL RESERVE BANK OF NEW YORK,

Defendants.

On the annexed verified bill of complaint, and the annexed affidavit of Isidor J. Kresel, sworn to June 15th, 1935, it is

ORDERED that the defendants herein, or their attorneys, show cause at a Stated Term of this Court for the hearing of motions, to be held in Room 235 of the Old Post Office Building, Park Row, in the Borough of Manhattan, City of New York, on the 18th day of June, 1935, at the opening of Court on said day, or as soon thereafter as counsel can be heard, why an order should not be made enjoining and restraining the defendants, their agents, officers, servants and employees, and each of them, during the pendency of this action and until the further order of this Court, from transferring, delivering, paying over, or otherwise disposing of, the plaintiff's bags of gold coins in said bill of complaint mentioned, to any person, firm, body or corporation other than the plaintiff; and why the plaintiff should not have such other or further relief in the premises as may be just; and, in the meanwhile, the individual defendants and said firm Ladenburg, Thalmann & Co., are and each of them is hereby restrained and stayed from transferring, delivering, paying over, said bags of gold coins to the Federal Reserve Bank of New York or to any one other than the plaintiff until the entry and service of an order on this application.

Service of this order, and the papers on which it is made, on the defendants or their attorneys on or before June 17th, 1935, at 11 o'clock in the forenoon, shall be sufficient.

Dated, New York City, June 15, 1935.

ALFRED C. COXE.
U. S. D. J.

AFFIDAVIT OF ISIDOR J. KRESEL, DATED JUNE 20, 1935.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT,

Plaintiff,

—against—

WALTER T. ROSEN, *et al.*, Co-partners doing business as LADENBURG, THALMANN & Co., and FEDERAL RESERVE BANK OF NEW YORK,

Defendants.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

ISIDOR J. KRESEL, being duly sworn, deposes and says:

1. I am the attorney for the above named plaintiff, I make this affidavit in reply to the opposing affidavit of Friedrich Wille herein, sworn to June 18, 1935, and filed by the defendant firm.

2. In said opposing affidavit it is suggested that the facts may reveal that the plaintiff is doing business in the United States, and thus that it is subject to lawful requisition of the gold under the Act of Congress of March 9, 1933, and the orders made thereunder. That subject was heretofore considered in the Department of the Treasury and the plaintiff's then attorneys, Messrs. Davis, Polk, Wardwell, Gardiner & Reed, submitted thereon the following affidavits, to wit:

(1) Affidavit of Eugen Meier, president of the plaintiff, sworn to May 28, 1935;

(2) Affidavit of Manfred Wronker-Flatow, sworn to June 6, 1935;

(3) Affidavit of Friedrich Wille, sworn to June 6, 1935;

(4) Affidavit of Theodore Hoffacker, sworn to June 6, 1935;

(5) Affidavit of Fritz von Opel, sworn to June 7, 1935;

(6) Second affidavit of Theodore Hoffacker, sworn to June 12, 1935;

(7) Second affidavit of Fritz von Opel, sworn to June 12, 1935.

I submit to the Court herewith copies of said affidavits and English translations of the exhibits in German annexed thereto.

3. I shall also submit to the Court copies of the two memoranda of law which the plaintiff's said former attorneys submitted to the Treasury Department in its behalf.

ISIDOR J. KRESEL.

Subscribed and sworn to before me
this 20th day of June, 1935.

WILLIAM PEYTON MARIN,
Notary Public,
Kings Co. Clk's No. 758, Reg. No. 7380,
N. Y. Co. Clk's No. 965, Reg. No. 7M583,
Commission expires March 30, 1937.

(Seal)

AFFIDAVIT OF EUGEN MEIER, DATED MAY 28, 1935.

IN THE DEPARTMENT OF THE TREASURY, OF THE UNITED STATES OF AMERICA.

In the Matter

of

The Application of UEBERSEE FINANZ-KORPORATION, AKTIEN GESELLSCHAFT, regarding gold held for its account in the United States.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

EUGEN MEIER, being duly sworn says:

1. I am a Swiss citizen and reside in the City of Liestal, Confederation of Switzerland. I am and have been since 1907 an attorney at law and member of the Bar of Basle. I am and have been since about the year 1924 (with the exception of one year about 1931) a member of the Board of Directors of Adler & Co. A. G., a banking corporation organized and existing under the laws of the Confederation of Switzerland and having its office and place of business at 16 Peterstrasse, City of Zurich, Confederation of Switzerland. I now am and have been for some years President of Adler & Co. A. G.

2. In April or May, 1932, I was elected President of Uebersee Finanz-Korporation A. G. at a stockholders meeting thereof held at the office of the corporation 82 Bahnhofstrasse, Zurich, Switzerland. I have since continued and still am President of said corporation.

Uebersee Finanz-Korporation A. G. is a banking corporation organized and existing under the laws of the Confederation of Switzerland and having its office and place of business originally at 82 Bahnhofstrasse, Zurich, but since early in 1932 at the office of Adler & Co A. G., 16 Peterstrasse, Zurich. Uebersee Finanz-Korporation A. G. was organized in 1922 and entered on June 3, 1922, in the Register of Commerce of the Canton of Zurich, Switzerland. By entry in such Register of Commerce said corporation became a legal entity, pursuant to Article 52 of the Swiss Civil Code, reading as follows:

> "Associations of persons organized into corporations, and institutions devoted to a special purpose and independent, receive the right of personality, by entry in the Commercial Register. Public corporations and institutions, societies not for profit, religious foundations and family foundations require no such entry. Associations or institutions for immoral or unlawful purposes cannot acquire legal personality."

Attached hereto marked Exhibit A is a true copy of the original German text of the statute or charter of said corporation. Attached hereto marked Exhibit B is a true copy of the original German text of the certificate of registration of said corporation in the said Register of Commerce.

3. The Board of Directors of said corporation consists of three members. These members are and have been since about the time of my election as President in 1932 Dr. Hans Frankenberg, a banker and Austrian citizen, and Dr. Joseph Henggeler, a lawyer and Swiss citizen, in addition to myself. Dr. Frankenberg and Dr. Henggeler both reside in Zurich. Dr. Frankenberg is and has been since 1932 in effect managing director of said corporation, conducting substantially all its affairs subject to the advise and consent of the other two directors. Of the two signatures required for valid corporate action, that of Dr. Frankenberg is almost always one.

Dr. Frankenberg is and has been since about the year 1931 managing director of Adler & Co. A. G. In conformity with general business custom in Switzerland and with the proposed new Swiss banking legislation, I as President of Adler & Co. A. G. had no part in the direct management of its affairs, which were in the hands of Dr. Frankenberg as managing director.

4. As is shown by Exhibit A, the capital stock of Uebersee Finanz-Korporation A. G. is divided into 100 shares of 5,000 Swiss francs par value. I am the owner of one of these shares. To my knowledge Dr. Henggeler and Dr. Frankenberg have each, as required by the charter, deposited one share of said stock with Adler & Co. A. G. in their respective names, but I do not know whether they own additional shares of stock. All the said 100 shares are bearer shares, and may under Swiss law be transferred or alienated without any record thereof on the books of the corporation. Article 614 of the Swiss Code of Obligations makes express provision for the creation of bearer shares in the following terms:

> "Shares of stock may be bearer or registered shares; they cannot be divided."

The holder of a bearer share by virtue of his possession is presumptively the owner, as is provided by Article 846 of the same Code:

> "Every holder of a security payable to bearer is deemed to have the right to demand payment thereof."

It has always been my understanding that Mr. Fritz von Opel, a German citizen and resident of St. Moritz, Switzerland, either owned personally or held for members of his family a substantial number of shares of Uebersee Finanz-Korporation A. G., but I have no personal knowledge on the subject. On May 14, 1935, I heard Mr. Fritz von Opel say that he was the owner of substantially all the stock of said corporation, subject to the right of usufruct

reserved in his father, Wilhelm von Opel. However, at the last stockholders meeting of the corporation on March 28, 1935, I was informed by Dr. Frankenberg that the shares of the corporation owned by Mr. Fritz von Opel had been pledged by him with Adler & Co. A. G. I have no personal knowledge regarding this pledge.

To the best of my knowledge and belief, none of the shares of Uebersee Finanz-Korporation A. G. is owned by a resident or citizen of the United States, and no resident or citizen of the United States has any interest in any of the shares of said corporation.

5. The Swiss Code, as interpreted by the courts, provides that the number of stockholders does not affect the separate entity and juridical existence of a Swiss corporation, and that the acquisition of all the shares in a single ownership leaves such entity and such existence unimpaired.

6. Stockholders meetings of Uebersee Finanz-Korporation A. G. are held regularly once a year at the office thereof in Zurich. The time of these meetings is in the first half of the year, usually in the spring. None of such meetings, so far as I know, has been attended by Mr. Fritz von Opel. As President I have presided at these meetings during and after 1933. Attached hereto marked Exhibits C to P inclusive are photostatic copies of the minutes of the organization and stockholders meetings of said corporation since 1922, so far as the same are available; I am informed that the minutes for the 1922 and 1923 stockholders meetings cannot be located.

The statement in the minutes for May 6, 1932, Exhibit L, that Mr. Fritz von Opel held 497 shares and that the corporation had 500 shares is erroneous since the corporation has only 100 shares and Dr. Frankenberg, Dr. Henggeler, and I are owners of at least three.

7. In Swiss law property charged with a usufruct is regarded as composed of two rights *in rem* (droits reels

dingliches recht), the one consisting of the usufruct belonging to the usufructuary and the other consisting of the naked property in the thing belonging to the preprietor. In Swiss law, a division of ownership in the thing is effected if the ownership of the usufruct is separate from the naked title. The right of usufruct is defined by the Swiss Civil Code §§745 and following.

8. To my knowledge Uebersee Finanz-Korporation A. G. has never done any business in the United States or in any country outside the Confederation of Switzerland. I does not have and has never had any general agent or representative in the United States, although the Board of Directors of the corporation has from time to time issued powers of attorney to Mr. Fritz von Opel, and he has been in the United States for short periods during the existence of one or more of these powers. The Board of Directors of the corporation has never entrusted Mr. Fritz von Opel any part of the management of the corporation. On the contrary the corporation has insisted at all times on maintaining the form and substance of corporate independence with respect to Mr. Fritz von Opel and Mr. Wilhelm von Opel. Mr. Fritz von Opel does not now possess and has not since July, 1934, possessed any power of attorney on behalf of the corporation. Uebersee Finanz-Korporation A. G. therefore submits that it is an independent foreign corporate entity not doing business in and not subject to the jurisdiction of the United States; that it is the sole owner of the gold held in its name and for its account by Messrs. Ladenburg, Thalmann & Co., No. 25 Broad Street, New York, N. Y.; and that its pending application with the Treasury Department on form TG-18 for leave to transfer said gold to the Federal Reserve Bank of New York for account of the Banque Nationale Suisse should be granted.

WHEREFORE it is respectfully prayed that reconsideration be accorded by the Treasury Department to the applica-

tion of Uebersee Finanz-Korporation A. G. heretofore filed on or about May 9, 1934, for the above purpose, and that said application be granted.

DR. E. MEIER.

Sworn to before me this
28th day of May, 1935.

WM. H. BRUDER,
Notary Public, Bronx County No. 122,
Certificate filed in New York County No. 611,
Bronx County Register's No. 126R37,
New York County Register's No. 7B347,
Commission expires March 30, 1937.

AFFIDAVIT OF MANFRED WRONKER-FLATOW, DATED JUNE 6, 1935.

IN THE DEPARTMENT OF THE TREASURY, OF THE UNITED STATES OF AMERICA.

In the Matter

of

The Application of UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT, regarding gold held for its account in the United States.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

MANFRED WRONKER-FLATOW, being duly sworn, says:

I now reside at 15 Central Park West, New York, N. Y., and was formerly an attorney and counselor at law in Germany. I received my legal education at Munich, Geneva,

and Berlin, and obtained a law degree from Berlin University in 1911. From 1911 on I was in the Prussian court service, and became a member of the Berlin Bar in 1920. As a member of the Berlin Bar I was the legal adviser of the American Chamber of Commerce in Germany and of other important American interests in Germany, including National City Bank, the Dupont interests, Eastman Kodak Company and General Motors Corporations.

In 1928 I drafted on behalf of General Motors Corporation the contracts for the acquisition by them of control of the Adam Opel Motor Works at Ruesselsheim-am-Main. When the option for this acquisition was carried out by General Motors Corporation, I drafted the remaining papers in the transaction, including the escrow agreement, Exhibit Q to the affidavit of Fritz von Opel herein.

In 1929 I became a member of the Board of Supervision (Aufsichtstrat)) and general counsel of Adam Opel A. G., the corporation which became the successor of Adam Opel Motor Works in 1928. In 1930 I resigned from the Board of Supervision and became a member of the Board of Management (Vorstand) of Adam Opel A. G., giving up my independent legal practice.

In September and October, 1931, I advised Dr. Wilhelm von Opel and his son Fritz von Opel in the preparation and execution of a deed of gift from the former to the latter, of which a copy is attached to the affidavit of Mr. Fritz von Opel herein marked Exhibit R. I participated in the conversations which led up to the execution of these documents. In these conversations it was stated by Dr. Wilhelm von Opel and Mr. Fritz von Opel that the securities covered in the deed of gift or the proceeds of these securities should be transferred to a corporation for the purpose of protecting the interests therein created by the deed of gift. The clauses in the deed of gift relative to the usufruct reserved to the parents of Fritz von Opel were particularly insisted on by Dr. Wilhelm von Opel, who said that he attached the greatest importance to this restriction on and reservation from the gift. As drawn

by me the deed of gift, Exhibit R, was drawn for the purpose of carrying out the intention of the parties so expressed.

In German law the right of usufruct (niessbrauch) was and is recognized to be a separate estate in the thing and to be a real right or right *in rem* (dingliches recht) in the thing. By virtue of this concept of German law and the deed of gift itself Dr. Wilhelm von Opel and his wife retained an independent property right in the securities described in the deed of gifts and in any and all proceeds thereof, which independent property right gave the parents certain definite rights and powers under German law with reference to said securities and their proceeds. The rights and powers thus reserved to the parents by virtue of their usufruct include the right to be consulted with reference to and to prevent (if so disposed) the sale of the securities or their proceeds by Mr. Fritz von Opel; the right to have provisions for the safeguard of their usufruct inserted in any agreement of pledge Mr. Fritz von Opel might make with reference to the securities or their proceeds; and the right in general to invoke the jurisdiction of the courts on the question whether or not any funds, proceeds of said securities, are invested in a manner such as to safeguard the right of usufruct and carry out in a reasonable manner the intention of the parties as expressed in their agreement creating the same. In addition by virtue of this right of usufruct the parents can at any time have the securities or their proceeds put under the joint control of themselves as usufructuaries and Mr. Fritz von Opel as holder of legal title.

The right of usufruct was derived by German law from the Roman law, and is governed by the following among other provisions of the German Civil Code, drafted in 1896 and promulgated in 1900, which is still the law of Germany:

> "§1030. The thing may be encumbered in such a manner that the person in whose favor the thing is encumbered has the right to draw the fruits of the thing (niessbrauch [usufruct]).

§1036. The usufructuary is entitled to the possession of the thing. In exercising the right of usufruct he must maintain the existing economic function of the thing and adhere to the rules of orderly management [ordungsmaessiger wirtschaft].

§1068. A right may also be the object of a usufruct.

§1081. Whenever a bearer security or instrument drawn to order, endorsed in blank, is the object of a usufruct, then in such case the usufructuary and the holder of legal title [eigentuemer] jointly have the right of possession of the instrument and of the renewal certificate appurtenant thereto [i.e. certificate entitling holder to new sheaf of dividend or interest coupons (§805)]. The usufructuary is entitled to the possession of the interest, dividends or profit participation coupon pertaining to the instrument.

§1082. On request of the usufructuary or of the holder of legal title [eigentuemer], the instrument together with the renewal certificate is to be deposited with a depositary with the stipulation that the release of the instrument may only be requested jointly by the usufructuary and the holder of legal title [eigentuemer]. The usufructuary may also request the deposit of the instrument with the Reichsbank.

§1083. Both the usufructuary and the holder of legal title [eigentuemer] in the instrument are obligated to each other to cooperate in the collection of any capital falling due and in the acquisition of new interest, dividend or profit participation coupons, as well as in all other measures which are necessary in the orderly administration of an estate."

I am informed that with part of the proceeds of the securities described in the deed of gift Exhibit R Mr. Fritz von Opel purchased shares of a Swiss corporation, Uebersee Finanz-Korporation A. G. If this be the fact, I am of opinion that under German law the above-described

rights and obligations based on the reserved usufruct would attach to the Uebersee Finanz-Korporation shares in the same manner as if these shares had been described in the deed of gift itself.

I am informed that with part of the proceeds of the securities described in the deed of gift Exhibit R there was purchased a quantity of gold now situated in the United States. On this assumption of fact, I am of opinion that under German law the above-described rights and obligations based on the reserved usufruct would attach to this gold in the same manner as if the gold had been described in the deed of gift.

I have no personal knowledge regarding the gold held for account of Uebersee Finanz-Korporation A. G. in New York.

MANFRED WRONKER-FLATOW.

Sworn to before me this
6th day of June, 1935.

WM. H. BRUDER,
Notary Public, Bronx County No. 122,
Certificate filed in New York County No. 611,
Bronx County Register's No. 126B37,
New York County Register's No. 7B347,
Commission Expires March 30, 1937.

AFFIDAVIT OF FRIEDRICH WILLE, DATED JUNE 6, 1935

IN THE DEPARTMENT OF THE TREASURY, OF THE UNITED STATES OF AMERICA.

In the Matter

of

The Application of UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT, regarding gold held for its account in the United States.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

FRIEDRICH WILLE, being duly sworn, says:

1. I am an employee of Ladenburg Thalmann & Co., doing business at 25 Broad Street, Borough of Manhattan, City of New York, and have had since 1920 charge of their books of account. I am familiar with the accounts of Uebersee Finanz-Korporation A. G., Zurich, kept with said firm of Ladenburg Thalmann & Co. Said accounts were kept from May, 1923 to April, 1928, and from March, 1933, to the present time. Under date of July 27, 1934, I made an affidavit regarding the volume and nature of the business carried on between Ladenburg Thalmann & Co. and Uebersee Finanz-Korporation A. G. from April 1, 1933, to July 26, 1934, and I am now making this affidavit to set forth the volume and nature of the business carried on from May 26, 1923, to April 16, 1928. The same are as follows:

(a) We made the following purchases of securities upon instructions by Uebersee Finanz-Korporation A. G. by cable or letter from Zurich, Switzerland:

1,160	shares Deutsch Luxemburg Mining & Smelting Corp.	$ 27,608.00
£ 1,300	Japanese Government 2d 4½% 1925	6,172.83
£ 18,800	Mexican Government 4% 1910	25,053.00
$ 5,000	Miag Mill Machinery 7% 1956	4,541.53
$131,000	Siemens & Halske 6½% 1951 50% paid	69,923.18
$ 20,000	Swiss Government 5½% 1929	20,008.54
$ 11,000	Swiss Government 5% 1926	10,802.88
		$164,109.96

(b) We made the following sales of securities upon instructions from Uebersee Finanz-Korporation A. G. by cable or letter from Zurich, Switzerland:

400	shares American Metal Co.	$ 16,474.00
$ 2,000	City of Berne 8% 1945	2,176.78
$ 5,000	Canadian Pacific Debenture 4%	4,213.75
$ 3,000	Chicago Rock Island & Pacific 4% 1934	2,382.83
$ 10,000	French Government 7% 1949	10,432.22
£ 4,000	Japanese Government 1st 4½% 1925	18,427.00
£ 6,300	Japanese Government 2d 4½% 1925	31,135.95
£ 2,000	Mexican Government 5% 1899	4,180.00
£ 18,000	Mexican Government 4% 1910	24,620.00
$ 7,500	Miag Mill Machinery 7% 1956	7,130.40
450	shares Missouri Pacific Preferred	14,364.50
$109,000	Rheinelbe Union 7% 1946	110,538.97
$ 30,000	Rhine Westphalia Electric 7% 1950	29,958.34
$ 2,000	Rock Island Arkansas & Louisiana 4½% 1934	1,552.50
$ 51,000	Siemens & Halske 6½% 1951 50% paid	27,526.56
$ 20,000	United Electric Service 7% 1956	20,484.44
$ 1,000	U. S. Liberty 4th 4¼% 1938	1,012.61
$ 9,000	United Steel Works 6½% 1951	9,567.37
		$336,178.22

(c) We received from or for account of Uebersee Finanz-Korporation A. G. the following securities:

700 shares American Bemberg "A"
500 shares American Bemberg "B"
400 shares American Metal Co.

$ 2,000 City of Berne 8% 1945
$ 5,000 Canadian Pacific Debenture 4%
$ 3,000 Chicago, Rock Island & Pacific 4% 1934
$ 10,000 French Government 7% 1949
£ 4,000 Japanese Government 1st 4½% 1925
£ 5,000 Japanese Government 2d 4½% 1925
£ 2,000 Mexican Government 5% 1899
£ 13,600 Mexican Government 4% 1910
$ 4,243.80 Mexican Government Interest in arrears Class A Certificates
$ 2,500 Miag Mill Machinery 7% 1956
450 shares Missouri Pacific Preferred
$255,000 Rheinelbe Union 7% 1946
$ 30,000 Rhine Westphalia Electric 7% 1950
$ 2,000 Rock Island Arkansas & Louisiana 4½% 1934
$495,000 Siemens & Halske 6½% 1951 50% paid
$ 30,000 United Electric Service 7% 1956
$ 1,000 U. S. Liberty 4th 4¼% 1938
$ 9,000 United States Steel Works 6½% 1951

(d) We delivered to or for account of Uebersee Finanz-Korporation A. G. the following securities:

700 shares American Bemberg "A"
500 shares American Bemberg "B"
1,160 shares Deutsch Luxemburg Mining & Smelting Corp.
£ 14,400 Mexican Government of 4% 1910
$ 4,243.80 Mexican Government Interest in Arrears Class A Certificates
146,000 Rheinelbe Union 7% 1946
575,000 Siemens & Halske 6½% 1951 50% paid
20,000 Swiss Government 5½% 1929
11,000 Swiss Government 5% 1926
11,000 United Electric Service 7% 1956

(e) We collected dividends and coupons totaling $22,308.

(f) We granted Uebersee Finanz-Korporation A. G. time loans totaling $160,000 which were repaid.

(g) We received payments for their account totaling $329,912.02.

(h) We made payments upon their orders totaling $520,686.07.

(i) Other items, being interest, commissions and expenses, resulted in a total net debit of $3,602.21.

2. So far as I know Uebersee Finanz-Korporation A. G. have never had and have not now a resident agent or representative or an office in the United States. Ladenburg Thalmann & Co. have at no time been the agent or representative of Uebersee Finanz-Korporation A. G. in the United States or otherwise, but have acted at all times solely as their bankers.

3. In due course of mail Ladenburg Thalmann & Co. received a letter signed on behalf of Uebersee Finanz-Korporation A. G. by Dr. E. Meier and Dr. Frankenberg and dated at Zurich July 17, 1934. This letter, which is in the German language, reads in translation as follows:

"We refer to our two letters of April 5th and August 17th, 1933, in which we have forwarded to you powers of attorney for Mr. Fritz von Opel, and request you to take note that all these powers are

to be considered as void and therefore without object."

FRIEDRICH WILLE.

Sworn to before me this
6th day of June, 1935.

ALBIN J. MAY,
Notary Public,
Queens Co. No. 976, Reg. No. 985,
Certificate filed in New York County,
N. Y. Co. Clerk's No. 162, Reg. No. 6M98,
My Commission expires March 30, 1936.

(Seal)

AFFIDAVIT OF THEODORE HOFFACKER, DATED JUNE 6, 1935.

IN THE
DEPARTMENT OF THE TREASURY,
OF THE UNITED STATES OF AMERICA.

In the Matter

of

The Application of UEBERSEE FINANZ-KORPORATION ARTIEN GESELLSCHAFT, regarding gold held for its account in the United States.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

THEODORE HOFFACKER, being duly sworn, says:

I am a resident of New York State, having my home at Briarcliff Manor, New York, and doing business under the name of Theodore Hoffacker & Co., 56 Pine Street, Borough of Manhattan, New York, N. Y.

The following is an account of my relationship with Mr. Fritz von Opel and the Uebersee Finanz-Korporation A. G.:

I first became acquainted with Mr. Fritz von Opel in October, 1931, when he was introduced to me at my office by Mr. Werner von Clemm. At that time Mr. von Opel asked me to advise him regarding his investments in the United States. I entered into a written agreement with Mr. von Opel, dated October 30, 1931 (a true copy of which is attached as Exhibit V to the affidavit of Fritz von Opel filed herein), whereby Mr. von Opel gave me discretion to deal with certain blocks of General Motors Corporation common stock owned by him. After dealing with these securities in accordance with the terms of the agreement, Mr. von Opel cancelled the agreement on or about January 8, 1932.

From time to time thereafter I transmitted to City Bank Farmers Trust Company instructions from Mr. von Opel regarding cash and securities held for his account by that bank.

In June, 1932, Mr. von Opel transferred the bulk of his investments in the United States to the Uebersee Finanz-Korporation A. G. Thereafter I continued to act as investment counsel to him in his personal capacity and as attorney-in-fact to the Uebersee Finanz-Korporation A. G. I transmitted instructions regarding the Uebersee accounts from Mr. von Opel as attorney-in-fact to the City Bank Farmers Trust Company, and these were always confirmed

either by Mr. von Opel, as attorney-in-fact, or by the corporation itself in Zurich.

From time to time limited powers of attorney were issued to me to vote the proxies of certain stock held by the Uebersee Finanz-Korporation A. G., chiefly Harvard Brewing Co., Spur Distributing Co., Oil Refineries, Inc., and Oil Production, Inc.

I continued to act in my capacity as investment counsel as aforesaid after the bulk of the holdings of the Uebersee Finanz-Korporation A. G. were transferred to Ladenburg Thalmann & Co. from the City Bank Farmers Trust Company, in the early part of 1933.

I have no personal knowledge regarding the purchase of gold in the United States in February, 1933, by Uebersee Finanz-Korporation A. G. except that I was informed by cable from Mr. Fritz von Opel in Europe after the purchase of the gold that it had been made.

At no time was I ever an agent or representative of Uebersee Finanz-Korporation A. G. Any dealings in regard to investments now held by it were conducted by me, solely in my capacity as investment counsel to and solely with Mr. Fritz von Opel.

THEODORE HOFFACKER.

Sworn to before me this
6th day of June, 1935.

MARION VAN VOAST, Notary Public,
Kings Co. Clks. No. 91, Reg. No. 7043,
N. Y. Co. Clks. No. 85, Reg. No. 7V43,
Commission expires March 30, 1937.

AFFIDAVIT OF FRITZ VON OPEL, DATED JUNE 7, 1935.

IN THE DEPARTMENT OF TREASURY, OF THE UNITED STATES OF AMERICA.

In the Matter

of

The Application of UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT, regarding gold held for its account in the United States.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

FRITZ VON OPEL, being duly sworn, says:

1. I am a German citizen by birth, but left Germany in 1929, and have since resided outside of Germany. I now reside in St. Moritz, Switzerland. I am a mechanical engineer by profession, having received a degree as engineer from the Darmstadt Hochschule in 1922 or 1923.

2. From 1923 or 1924, after leaving the university, I was employed as mechanical engineer in the Adam Opel Motor Works at Ruesselsheim-am-Main, Germany. The Adam Opel Motor Works was a family enterprise organized as a partnership and engaged in the manufacture of motor cars at Ruesselsheim, with various branches in Germany. The factory had originally been founded by my grandfather, Adam Opel, in 1862 for the manufacture of sewing machines, bicycles, etc.

In 1928 the Adam Opel Motor Works was reorganized as a corporation under the title Adam Opel Aktien Gesellschaft with the former partners as shareholders. The capitalization of the new company was 60,000,000 Reichsmarks divided into 6,000 shares of a par value of 10,000 Reichsmarks each. In 1928 also I became general manager of the corporation.

3. Pursuant to negotiations which began at the end of 1928 and were consummated in March or April, 1929, the stockholders of Adam Opel A. G. sold to General Motors Corporation 80% of the stock of Adam Opel A. G. Of the remaining 20%, one-half, or 10%, was retained by my father, Wilhelm von Opel, and the balance, or 10%, by my uncle, Dr. Fritz Opel.

Under date of April 11, 1929, my father, Wilhelm von Opel, entered into a separate escrow agreement with General Motors Corporation whereby he deposited his said 10% of stock of Adam Opel A. G. having a par value of 6,000,000 Reichsmarks with the National City Bank of New York. A true copy of this agreement is attached hereto marked Exhibit Q. It provided in substance for the retention of the stock certificates by National City Bank until April 1, 1934, and for an option either to General Motors Corporation to buy or to my father to sell after March 31, 1931, at graduated prices varying between 23,000 Reichsmarks and 30,000 Reichsmarks per share. I did not know of the existence of this particular agreement until October, 1931, as hereinafter stated.

4. Toward the end of the year 1929 I went to America for the purpose of familiarizing myself with American manufacturing methods, and worked as an employee for General Motors Corporation (Chevrolet Division) in their Detroit, Toledo, Saginaw and Flint plants from January to December, 1930. At the end of this period I was transferred to the employ of General Motors Export Corpora-

tion and went to their Antwerp factory where I was employed for the first three-quarters of the year 1931.

5. In the fall of 1931 my father asked me to come to Germany to discuss with him my further employment in the Opel motor works which was now being controlled and operated by General Motors Corporation. I went to Russelsheim, and after discussion refused the post offered to me, which was inferior to my former position of general manager. In consequence of this decision my father with the consent of my mother executed under date of October 5, 1931, a deed of gift to me of his 10% of the stock of Adam Opel A. G. having a par value of 6,000,000 Reichsmarks. This document was drawn by Dr. Wronker-Flatow, general counsel to Adam Opel A. G., as legal adviser to both my father and myself in the matter. A true copy of this deed of gift is hereto attached marked Exhibit R. In substance it provided that naked title only to the shares was transferred to me, that the usufruct or interest for life of the shares remained with my father and mother and the survivor of them, that my title in the shares was likewise charged with the interest of my sister and her issue in the event of the death of my parents before my death, that the gift should be null and void in the event of my death without issue, during the life of my parents or either of them, and that this allocation of property rights in the shares should attach to their proceeds in whatsoever form. The latter provision is as follows:

> "In the event that these shares should be sold or exchanged for other securities, then the proceeds of such sale or the securities received in exchange are to take the place of said shares, subject to the rights of usufruct of the parents Opel."

This deed of gift, Exhibit R, was likewise executed by me and thereby accepted in accordance with its terms. Before accepting the deed, however, I protested to my

father against the insertion of the restriction, the reservation of usufruct, etc., which left with me a mere legal title plus 20% of the dividends and interest. My father, however, insisted upon these terms. In connection with the execution and delivery of this deed of gift my father received an oral stipulation from me which was not included in the document, to the effect that these shares or their proceeds would be transferred by me immediately to a corporation whose shares would be distributed or held so as to safeguard the various interests in the stock or its proceeds set forth in the deed of gift.

Prior to the drafting and execution of the deed of gift, Exhibit R, I had no knowledge of the existence of the escrow agreement, Exhibit Q, relative to these 600 shares of Adam Opel A. G. Upon seeing the escrow agreement, however, I was alarmed to observe that it called for payment under either option in Reichsmarks; I feared a fall in Reichsmarks, having in mind the banking collapse in Austria, the Hoover moratorium, the banking troubles in Germany, and the suspension of gold payments by Great Britain which had taken place during the summer and autumn of 1931. I therefore told my father that I would go to New York immediately for the purpose of negotiating a change in this escrow agreement so as to put it on a gold basis. For that purpose he gave me under date of October 6, 1931, a power of attorney, executed before the American Consul at Frankfort-am-Main, of which a true copy is hereto attached marked Exhibit S.

6. Within the next few days I left for New York. Upon arriving in New York in October, 1931, I entered into negotiations with John Thomas Smith, vice president and general counsel of General Motors Corporation, in New York, for a modification of the escrow agreement, Exhibit Q, so as to place the Reichsmarks payable thereunder on a gold or gold equivalent basis. I received no definite answer on this proposal, but after several days I was told

by Mr. Smith that my father had agreed by cable with Mr. Sloan, president of General Motors Corporation, to modify the escrow agreement so that the price of 300 shares of Opel Motor Works stock, that is one-half the total number, should be payable in Reichsmarks on a gold or gold equivalent basis. On receiving this news from Mr. Smith, I considered the matter for a while and then told Mr. Smith that I did not agree and would call for payment under the escrow agreement in the exercise of my rights as attorney-in-fact. I then cabled my father stating in substance what I had done, giving my reasons, and adding that I would discuss the matter with him on my return to Germany.

On or about October 17, 1931, I gave written notice to General Motors Corporation of my election to deliver to it the shares described in the escrow agreement, Exhibit Q, at the price therein stated, which on that date was 26,500 Reichsmarks a share, representing a total price of 15,900,000 Reichsmarks. A true copy of this notice is hereto attached marked Exhibit S-1. I also filed with the National City Bank of New York the power of attorney from my father, Exhibit S, and under date of October 19, 1931, sent National City Bank a letter instructing them to deliver the shares to General Motors Corporation, of which letter a true copy is attached hereto and marked Exhibit T. The stock certificates were accordingly delivered to and receipted for by General Motors Corporation on October 20, 1931.

Since under the escrow agreement General Motors Corporation was entitled to defer payment until 30 days after receipt of my notice of intention to exercise the option, I agreed to take in part payment at once 47,625 shares of common stock of General Motors Corporation at an agreed price of $24 per share, making a total of $1,143,000 on the purchase price. The balance of the purchase price was to be paid by General Motors Corporation in dollars in New York at the average rate of exchange in New York

for marks over a period of six days commencing on November 17, 1931.

Pursuant to this arrangement there was paid in by General Motors Corporation to my father's account with the National City Bank of New York the following amounts as of the following respective value dates, according to the transcript of said account furnished me by National City Bank:

Value Date	*Credit*
November 17, 1931	$ 432,116.49
November 18	431,843.23
November 19	432,480.84
November 20	432,845.19
November 21	432,936.27
November 24	432,526.62
Total	$2,594,748.64

The aggregate purchase price so paid by General Motors Corporation for the 600 shares of stock of Adam Opel A. G. described in the escrow agreement, Exhibit Q, was therefore $3,737,748.64, or an average rate of exchange of $0.23508 to the mark for the 15,900,000 Reichsmarks constituting the purchase price under the agreement.

7. Pursuant to my instructions, immediately after the receipt of the above amounts from time to time by the National City Bank of New York to the credit of Wilhelm von Opel, the same amounts were paid by the National City Bank of New York to the credit of an account entitled "Main Account as Custodian, Fritz von Opel, Principal A/C" with City Bank Farmers Trust Company, then at 22 William Street, New York, New York. This account was opened by me on November 16, 1931, for the special and sole purpose of receiving the proceeds of the said Adam Opel A. G. stock. The 47,625 shares of General

Motors Corporation common stock were likewise delivered to the National City Bank of New York either for my or for my father's account and were transferred upon my instructions to a custody account with City Bank Farmers Trust Company.

For the purpose of dealings in General Motors Corporation stock City Bank Farmers Trust Company set up on November 17, 1931, an account entitled "Special Account re General Motors Corporation stock as Custodian, Fritz von Opel, Principal A. C." In directing the transfer to be made by the National City Bank of New York I used the power of attorney given by my father, Exhibit S, which was supplemented for this purpose by a special power arranged by cable by my father in Germany.

In connection with the receipt of these payments and with these transfers and in accordance with the conversation above described with my father, it was my purpose to transfer the entire amount of cash and securities as soon as possible to a corporation the stock of which, like the original cost and securities themselves, would be held subject to the terms of the deed of gift, Exhibit R. For this purpose I had in mind Uebersee Finanz-Korporation A. G., an option on which was pending as hereinafter described. I asked Mr. H. D. Sammis, vice-president of City Bank Farmers Trust Company, what papers would be necessary for this operation, and he handed me a form of corporate power of attorney on which he wrote the date October 28, 1931, and which was subsequently filled out and executed under date of January 15, 1932, by Uebersee Finanz-Korporation A. G. A true copy is attached hereto marked Exhibit U.

I left New York early in November, 1931. Before leaving New York I took the advice of various investment bankers regarding the manner of investing the above described cash and securities. I was introduced to Theodore Hoffacker about the end of October, 1931, by our

mutual acquaintance, Werner von Clemm, customer's man of Burden Cole & Co. With Mr. Hoffacker I made an arrangement in writing dated October 30, 1931, of which a true copy is hereto attached marked Exhibit V, for dealing in General Motors Corporation common stock. Early in January, 1932, I cancelled the written agreement, Exhibit V, by cable.

During November and December, 1931, substantially all the cash in my accounts with the City Bank Farmers Trust Company was invested in high-grade American securities upon cable instructions from me to City Bank Farmers Trust Company.

8. On leaving New York in November, 1931, I went directly to Ruesselsheim, where I described to my father what I had done. This conversation took place before the receipt of the first payment in New York from General Motors Corporation as above described. I explained to my father the reasons which in my view made it advisable to call for payment under the escrow agreement immediately, particularly the importance of having the investment represented by such agreement in more or less liquid form available for conversion into stable forms of value which would protect the investment against the destructive effects of monetary inflation. After discussion, my father said that he agreed with this view and my decision.

At this time I had an option to purchase all or substantially all of the stock of Uebersee Finanz-Korporation A. G., a corporation organized under the laws of Switzerland in 1922 and having its head office in Zurich. This option had been acquired in the following manner. In April, 1931, when I was employed in Antwerp as aforesaid, I learned through Dr. Frankenberg, an old acquaintance of my father's then employed in Zurich as general manager of a banking corporation known as Adler & Co., A. G., that the owners of the stock of Uebersee Finanz-

Korporation A. G. would be willing to sell it to me. I wished to acquire the stock of this or some other company for the purpose of transferring to the corporation several scores of patents upon inventions which I had made or acquired. I therefore entered into negotiations with Dr. Frankenberg as general manager of Adler & Co. A. G. for the acquisition of this stock which had a par value of 500,000 Swiss francs, with 250,000 Swiss francs paid in. These negotiations were conducted orally in Zurich and by correspondence, and resulted in the execution of a contract between me and Adler & Co. A. G. on or about April 27, 1931. No copy of this contract is available to me in New York. My recollection of this contract is that I was given thereby an option to buy, and Adler & Co. A. G. an option to sell, all or substantially all the 100 shares of 5,000 Swiss francs par value each, the option to be exercised not later than December 31, 1931, and the price to include a premium varying according to which party exercised the option. I dealt only with Adler & Co. A. G. and did not know who were the original owners and the sellers of the shares. The shares in question were bearer shares, which is a type very common in Europe, and which did not require registration of their owners' names in any record of the corporation.

Toward the end of December, 1931, the option conferred by the agreement of April 27, 1931, was exercised, and I became the purchaser of 97 out of the 100 shares issued and outstanding of Uebersee Finanz-Korporation A. G. stock at a price stated in Swiss francs somewhat above the amount paid in on the shares.

This purchase price was paid by me in the following manner:

On December 1, 1931, I transferred to the Swiss Credit Anstalt, Zurich, Switzerland, the sum of $20,000 from my account with City B[illegible] Farmers Trust Company, as is shown by the debit on that date on the transcript of my account, this money being part of the proceeds received

from General Motors Corporation in the above-described transaction. Upon my return to Switzerland and a few days before February 24, 1932, I drew a bearer check on the account thus created with the Swiss Credit Anstalt in the amount of 59,500 Swiss francs, being the equivalent of $11,604, which check was to the order of bearer and which I delivered to Dr. Frankenberg for transmission to the original owners and sellers of the stock of Uebersee Finanz-Korporation A. G. in part payment of the purchase price. The debit representing payment of this check appears on my account with Swiss Credit Anstalt under date of February 24, 1932.

About March, 1932, I orally instructed Dr. Frankenberg, as managing director of Adler & Co. A. G., to pay to the original owners and sellers of the Uebersee stock the balance of the purchase price, namely 250,000 Swiss francs. This payment was made by Adler & Co. A. G. on April 2, 1932. The 250,000 Swiss francs involved represented only the one-half of the capital stock theretofore paid in. Before leaving for New York in April, 1932, as hereinafter stated, I also asked Dr. Frankenberg, as managing director of Adler & Co. A. G., to pay in the balance of the capital stock, amounting to 250,000 Swiss francs. This payment was made under date of May 24, 1932, according to the books of Adler & Co. A. G. This latter payment is noted in the minutes of the stockholders' meeting of the company held on June 1, 1932, Exhibit M to the affidavit of Dr. Eugen Meier filed herein.

Both of these transfers (the payment of the balance of the purchase price as well as the payment in of additional capital), so made by Adler & Co. A. G., upon my instructions, were charged to my personal account with Adler & Co. A. G.

Subsequently in August and November, 1932 these charges were cancelled by counterbalancing book entries pending a new capital issue of Uebersee Finanz-Korporation A. G. as hereinafter mentioned. The only cash pay-

ment made by me for the stock of Uebersee Finanz-Korporation A. G. was the payment of $11,604 made on February 24, 1932, as above described. The entire purchase price of the Uebersee Finanz-Korporation A. G. stock sold to me in December, 1931, was paid out of the proceeds of the deed of gift from my father, Exhibit R hereto. I am positive that no other funds whatsoever were used by me in payment for these shares, and in fact upon leaving Europe in October, 1931, to go to New York, and subsequently, I had no cash at my disposal in any substantial amount except the proceeds of the said deed of gift.

9. In or shortly before January, 1932, my father left Germany on a world cruise. Before his departure about Christmas time 1931 I had a conversation with him in Ruesselsheim with regard to the above described securities with City Bank Farmers Trust Company. I said to him, and he agreed, that, if the option were exercised on the stock of Uebersee Finanz-Korporation A. G., it might not be necessary to form a new corporation but that the Uebersee Finanz-Korporation A. G. might serve as the holding company originally contemplated between us. My father asked me to be sure that the details were so arranged as to protect his and the other interests in the proceeds of the deed of gift, Exhibit R, and suggested that Dr. Frankenberg should become managing director of the holding company. The option having been exercised in the manner above-described, I went to Zurich and obtained from Uebersee Finanz-Korporation A. G. under date of January 13, 1932, a power of attorney authorizing me to sign for the corporation, employing the form furnished me as above stated by Mr. Sammis. A true copy of this power of attorney is hereto attached marked Exhibit U. At the same time I had a conference with Dr. Frankenberg in which I asked him if he would be willing to serve as a member of the board and managing director

of Uebersee Finanz-Korporation A. G. He stated that he would do so. I said that I was going to New York in the near future for the purpose of turning over the securities held for my account at City Bank Farmers Trust Company to Uebersee Finanz-Korporation A. G. Dr. Frankenberg said that in such event the corporation should cause new capital stock to be issued in my name and delivered to me up to a par value in Swiss francs equal to the value of the securities so turned over by me. He said, however, that the exact form of the issue would have to be reserved for further consideration, when we knew the exact amount of property turned over and the question of corporate taxes, etc., could be determined. The amount of new capital which we discussed was 5,000,000 to 6,000,000 Swiss francs. It was for this reason that he suggested to me the advisability of paying in at once the 250,000 Swiss francs of capital stock authorized but not issued.

10. Toward the end of April, 1932, I received a cablegram from my father asking me to meet him in New York, where he would stop on the world cruise, for the purpose of discussing with General Motors Corporation certain technical questions connected with the management and operation of the Opel motor works plant by General Motors. I arrived in New York on May 5, 1932, and had conferences with my father and the officials of General Motors Corporation on the subject of the plant in Germany and of their desire to interest us or other German concerns as minority stockholders in their German subsidiary. I also called at City Bank Farmers Trust Company soon after May 5th and informed the Trust Company that I wished to transfer to Uebersee Finanz-Korporation A. G. the cash and securities which the Trust Company held for my account. The officer of the Trust Company with whom I talked said that for this purpose a new power of attorney would be required and I cabled to

Dr. Frankenberg for such a new power. At the end of May, 1932, I received from Dr. Frankenberg a further power of attorney dated May 9, 1932, of which a true copy is attached marked Exhibit W. On the basis of this power of attorney I wrote City Bank Farmers Trust Company on May 31, 1932, directing it to open an account in the name of Uebersee Finanz-Korporation A. G. and to transfer to it all the cash and securities then held by it in my main principal and income account, with the exception of 47,625 shares of General Motors Corporation stock which was to remain in my account subject to my further instructions. A true copy of this letter is hereto attached and marked Exhibit X. In reply I received a letter from City Bank Farmers Trust Company dated June 6, 1932, enumerating the securities so transferred, of which a true copy is hereto attached and marked Exhibit Y. The total par value of these securities was $2,339,000. Cash was transferred in addition to the amount of $236,955.46 principal and $2,160.00 income.

The 47,625 shares of General Motors Corporation common stock, above mentioned, were withheld from the transfer to Uebersee Finanz-Korporation A. G. in order that they might be traded in pursuant to my above-described arrangement with Mr. Hoffacker. They were so traded in during 1932 and 1933, under an oral arrangement between me and Mr. Hoffacker renewing the terms of the written agreement, Exhibit V hereto. They were ultimately converted into other securities, the certificates for which were forwarded to Uebersee Finanz-Korporation A. G. at Zurich.

At the time of this transfer I directed City Bank Farmers Trust Company, as attorney-in-fact of Uebersee Finanz-Korporation A. G., to credit 20% of income collected by the Trust Company for account of the corporation, to my personal account. This advice was to conform with the provision in the deed of gift, Exhibit R, giving me 20% of dividends and interest.

11. I left New York on or about June 5, 1932, and returned to Switzerland. Thereafter I kept in touch by cablegram with Mr. Hoffacker with regard to the investments of Uebersee Finanz-Korporation A. G. in the United States. I also frequently consulted with Dr. Frankenberg as managing director of the corporation regarding its investments, especially the corporation's investment in the stock of Spur Distributing Company, Inc., amounting to $440,871.44.

Spur Distributing Company, Inc., was a Delaware corporation operating a gasoline distributing system. Uebersee began to purchase the stock of Spur about June, 1932, and ultimately acquired the control. Spur had no refinery and no supply of crude oil of its own. In the summer of 1932, and after my return to Europe I discussed with Dr. Frankenberg my concern over the future gasoline supply of the company. I feared increasing pressure of the larger companies against smaller competitors like Spur Distributing Company, Inc., and decided in concert with Dr. Frankenberg to take steps toward supplementing the gasoline distributing system of Spur with oil reserves and a refinery so as to constitute an independent unit and protect Spur for a period of some fifteen years. For this purpose, acting as attorney-in-fact of Uebersee, by cable instructions to City Bank Farmers Trust Company from Zurich and elsewhere in Europe I caused United States Government and public utility bonds of Uebersee to be sold and the proceeds credited to its account in New York, as follows:

Date	*Credit*
September 9, 1932	$ 110,722.50
October 11	507,500.00
	205,000.00
October 13	255,843.75
November 14	14,758.70
	128,973.00
	6,785.60
	38,973.75
	2,202.60

Date	*Credit*
November 16	31,565.80
	21,538.10
	3,216.40
	1,791.30
Total	$1,328,871.50

Early in November I arrived in New York for the purpose of acquiring the additional units in connection with the Spur system. Soon after arriving I found that my fears with regard to the basis of operation of the Spur Distributing Company, Inc., were confirmed by a letter which Crittenden Engineering Company addressed to Mr. Hoffacker under date of November 17, 1932, which referred to studies beginning in September and contained the following:

> "A careful analysis of Spur's 1931 operations showed an attractive profit; approximately ¾¢ per gallon of marketing throughout. The trend of the 1932 operations over the first nine months showed a sharply declining profit margin. This margin depends almost solely on the ability of the management to purchase quality gasoline below market quotations. The existence of low priced gasoline during ten months of 1931 was the result of chaotic conditions in several crude producing fields which were relatively stabilized in November, 1931. The trend in wholesale gasoline prices has been upwards, amounting to ½¢ per gallon higher for the first nine months of 1932 than the average of 1931."

For the purpose of meeting this situation I made a proposal on November 17, 1932, to Mr. Clifford M. Leonard to invest $1,000,000 in installments beginning December 1, 1932, and ending September 1, 1933, in stock of a proposed new corporation which with Spur Distributing Company,

Inc., would form a completely integrated oil unit. The proposed new corporation was to have an authorized capitalization of 1,000,000 shares; my proposed commitment of $1,000,000 involved the purchase of one-fifth of the authorized capital stock; and in addition I proposed to take options for the purchase of capital stock in the amount of a further $2,500,000, part of this purchase price to be paid for the stock of Spur Distributing Company, Inc.

These negotiations continued for several months or until about March, 1933, when for various reasons they failed to materialize. Instead two corporations were organized under Louisiana law, in the early part of 1933, one called Oil Refineries, Inc., and the other Oil Production, Inc., Mr. Leonard participating in the management. In these corporations Uebersee during 1933 invested an aggregate of $756,000. Dr. Frankenberg and I intended on behalf of Uebersee greatly to increase its investments in these oil companies and would have increased them were it not for the impounding of the company's gold in the United States in March, 1933, as hereinafter described. Over and above the monies actually invested by Uebersee in Oil Production, Inc., and Oil Refineries, Inc., there were recommended for purchase by engineering counsel oil leases and acreage up to the amount of $6,000,000, which has since greatly increased in value. This purchase could have been made with a present cash expenditure of $1,500,000.

In addition upon my arrival in New York in November, 1932, I made a proposal to General Motors Corporation to repurchase stock of Adam Opel A. G. up to an amount varying between 6,000,000 and 12,000,000 Reichmarks, which proposal, if accepted, I intended to transfer to Uebersee Finanz-Korporation A. G. After some negotiation, however, this proposal was declined by General Motors Corporation in the summer of 1933.

It was by reason of these pending investments on behalf of Uebersee Finanz-Korporation A. G. that Dr. Franken-

berg and I caused the liquidation of bonds held for its account as above-described.

I returned to Switzerland in December, 1932. I went to Zurich and discussed with Dr. Frankenberg as managing director of Uebersee Finanz-Korporation A. G. the investments which I had made and was contemplating for the corporation and he approved of them.

12. The beginning of the banking holiday in the United States in February, 1933, made me fearful that the funds of Uebersee which had been put in liquid form for the express purpose of making the investments above enumerated, would be tied up indefinitely through a closing of the banks. With the very large commitments on hand and in view, I did not want Uebersee to become involved in an illiquid position. I discussed the situation with Dr. Frankenberg both by telephone and face to face, and was told by him to convert the cash holdings of the corporation into gold or foreign exchange. I therefore cabled City Bank Farmers Trust Company on February 26, 1933, as follows:

> "Please purchase for account Ueberseeische One Million Two Hundred Fifty Thousand Dollars gold and place in safekeeping stop Notify me by cable"

I received from the Trust Company under date of February 27, 1933, the following acknowledgment:

> "Have placed order to purchase one million two hundred fifty thousand dollars gold stop Can not extend facilities for holding said gold in custodian account. Stop Please advise disposition to be made of said metal immediately."

The Trust Company's file copy of this cablegram is entitled "Ueberseeische Finanz-Korporation Ltd. Custodian A/C number 16875".

The transcript of account of Uebersee Finanz-Korporation A. G. with the Trust Company shows a charge of

$1,250,000 on February 27, 1933, for the purchase of gold coin. In reply to the Trust Company's cablegram I on behalf of Uebersee instructed it to deliver the gold to Ladenberg Thalmann & Co., 25 Broad Street, New York, New York for account of Uebersee. This transfer to Ladenberg Thalmann & Co. was made at the suggestion of Dr. Frankenberg. For some years before 1928 Uebersee had had an active account with Ladenberg Thalmann & Co., in New York.

In January and March, 1933, further bonds were sold by City Bank Farmers Trust Company by my orders for account of Uebersee as follows:

January 13, 1933	$ 4,850.55
	1,184.20
March 2	74,531.25
	150,911.25
March 14	124,710.00
	24,906.25
	19,757.13
	12,821.25
Total	$413,671.88

In March, 1933, through Ladenberg Thalmann & Co. Uebersee made sales of bonds as follows:

March 2, 1933	$156,211.61
	97,258.67
	75,748.96
	25,312.15
March 3	110,696.66
	15,057.50
	13,033.58
	1,013.83
	20,060.46
Total	$514,393.42

These sales also were made for the purpose of placing Uebersee Finanz-Korporation A. G. in funds with which to fulfill the investment program above described. With the closing of the American banks on March 14, 1933, the $1,250,000 of gold was no longer available to the corporation. Acting for Uebersee I ordered $600,000 to be transferred to the Swiss Credit Anstalt in Zurich for its account by City Bank Farmers Trust Company on March 16, 1933. Uebersee on and after September 18, 1933, sold 3,000,000 Swiss francs, as appears from the affidavit of Friedrich Wille herein verified July 27, 1934, and used the proceeds, $910,296.90, together with other monies for the purpose of the investments for which the gold had been accumulated.

13. On or about April 24, 1933, I came to the United States for about 10 days (sailing again on May 3, 1933) in the hope of getting a definite reply from General Motors Corporation in response to the above-described proposal for the purchase of Adam Opel A. G. stock. While in New York I requested Ladenberg Thalmann & Co. to apply for a license in the name of Uebersee to export the $1,250,000 of gold held by them. By reason of the refusal of the export license I was forced to curtail the oil program above described to approximately one-third, so that Uebersee was able through Oil Production, Inc., to purchase oil reserves amounting to only about 4,540,000 barrels instead of the 15,000,000 barrels contemplated, despite the large expenditures already incurred for geological surveys, title searches, etc.

14. On August 24, 1933, I again visited the United States as pilot of one of the two official German balloons entered by Germany in the Gordon Bennett cup races at Chicago. I was accompanied to the United States by Dr. Wronker-Flatow, who was one of the managing staff of the Opel Works and who came, among other things, for

the purpose of obtaining a definite answer to my above-described proposal for the acquisition of Opel shares.

I discussed with Ladenberg Thalmann & Co. during this visit the situation of the gold held in this country for account of the corporation by them and the investments of the corporation. My authority to deal with them on behalf of the corporation was a power of attorney dated May 17, 1933, and signed by Dr. Meier and Dr. Frankenberg, which I believe was forwarded to Ladenberg Thalmann & Co. by mail and of which a true copy is attached hereto marked Exhibit Z.

15. The 97 bearer shares of Uebersee which I acquired in the manner above stated are now on deposit in a vault in my name, No. 1917, with the Swiss Credit Anstalt in Zurich, Switzerland, the key to which is in the possession of Dr. Frankenberg. This key is held by Dr. Frankenberg as agent and representative of my father, Wilhelm von Opel, for the purpose of safeguarding his usufruct. In addition I have an oral agreement with Dr. Frankenberg as managing director of Adler & Co. A. G. by which these shares are to secure any existing or future indebtedness on my part to Adler & Co. A. G. This arrangement was made in connection with a credit opened to me by Adler & Co. A. G. up to 1,500,000 Swiss francs, principally for the purpose of fulfilling a joint obligation of my father and myself to the German Reichsbank.

16. I am married, but have no children.

17. My father Wilhelm von Opel and my mother Marta von Opel are still living. Both are citizens and residents of Germany. Neither has been in the United States since June, 1932, when they landed at New York on the world cruise above referred to. My sister, Mrs. Elinor Sachs,

is also still living. She is likewise a citizen and resident of Germany. To the best of my recollection she has not been in the United States since 1927 or 1928. The settlement with my said sister contemplated in the deed of gift Exhibit R has not yet been made.

18. At no time, to the best of my knowledge or belief, has Uebersee Finanz-Korporation A. G. been engaged in business in the United States, nor is it now so engaged. At no time has it had an agent or representative in the United States, except for the transient visits made by me as attorney-in-fact for the corporation as described in this affidavit. The corporation has not now and never has had an office or branch in the United States.

FRITZ V. OPEL.

Sworn to before me this
7th day of June, 1935.

WM. H. BRUDER,
Notary Public, Bronx County No. 122,
Certificate filed in New York County No. 611,
Bronx County Register's No. 126B37,
New York County Register's No. 7B347,
Commission Expires March 30, 1937.

AFFIDAVIT OF THEODORE HOFFACKER, DATED JUNE 12, 1935.

IN THE DEPARTMENT OF THE TREASURY

OF THE UNITED STATES OF AMERICA.

In the Matter

of

The Application of UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT, regarding Gold held for its Account in the United States.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

THEODORE HOFFACKER, being duly sworn, says:

I am engaged in business as an investment banker and industrial manager, and made an affidavit herein on June 6, 1935. Subsequently I have been informed by Davis Polk Wardwell Gardiner & Reed, attorneys for the above-named Uebersee Finanz-Korporation A. G., that the desirability of further information has been suggested by the Treasury with respect to (a) any and all understandings between myself and Mr. Fritz von Opel or Uebersee as to compensation to me for advice with regard to investments, etc., and (b) the corporations in which Uebersee has invested in the United States, their mode of management, etc.

(a) As regards any understanding with Uebersee or Mr. Fritz von Opel concerning compensation for investment advice, etc., I have never had any communication,

oral or written, with Uebersee Finanz-Korporation A. G., directly or indirectly with respect to compensation from Uebersee to me or the rendering of investment advice by me to Uebersee. My only communications, written or oral, regarding investment advice to be furnished by me or compensation to be received by me therefor, with any one connected with Uebersee Finanz-Korporation A. G., were communications to and from Mr. Fritz von Opel. The only written communication on that subject between us was the letter agreement dated October 30, 1931, of which a copy is attached to Mr. von Opel's affidavit of June 7, 1935, herein, marked Exhibit V. This agreement was cancelled pursuant to its terms by Mr. von Opel by cable early in January, 1932. Subsequently, however, upon Mr. von Opel's arrival in New York in May, 1932, we had a conversation in which it was agreed that trading should continue in the General Motors Corporation common stock described in Exhibit V under the same terms. My oral communications with Mr. Fritz von Opel on this subject were all had during his visits to New York in 1931 and 1932 during the periods specified in his said affidavit. The conversations on this subject between us in 1931 are summed up in and represented by the written agreement Exhibit V. The conversations between us on this subject in 1932 consisted in an oral agreement by Mr. von Opel that I should continue to trade on his behalf in the General Motors Corporation common stock account referred to in his affidavit, and a statement by him that with respect to any other investments which he purchased on my advice he would compensate me to the extent of 20% of any profit as measured by the difference between the purchase price and the ultimate selling price.

In none of these conversations did Mr. von Opel say that he was acting as attorney-in-fact for Uebersee Finanz-Korporation A. G., and I did not understand in any way

or form that he was purporting to bind Uebersee by the statements above described. I knew that Uebersee was not the owner of General Motors Corporation common stock which we discussed, and I now understand that at the time of our first conversations in October and November, 1931, Mr. von Opel did not own any stock of Uebersee. At the time of Mr. von Opel's visit in 1932 I knew that he had some interest in Uebersee Finanz-Korporation A. G., but I had no knowledge concerning this corporation, and I only learned incidentally through participating in a conversation in which City Bank Farmers Trust asked Mr. von Opel to supplement a previous power of attorney, that he then had a power of attorney for Uebersee Finanz-Korporation A. G. I always dealt with Mr. Fritz von Opel as a principal, and never as a representative of any company.

Beginning in May and early June, 1932, I discussed with Mr. Fritz von Opel investments to be made in this country. These discussions eventuated after some time in orders given me by Mr. von Opel either orally when he was in New York or by cable or letter from Zurich or elsewhere in Europe to purchase stock or obligations of Spur Distributing Co. Inc., Harvard Brewing Co. (Delaware), Oil Production Inc., and Oil Refineries Inc. When deliveries were made on these purchases, payments for the stock or obligations were made by Uebersee Finanz-Korporation A. G. through their bankers City Bank Farmers Trust Company or Ladenburg Thalmann & Co. In this way I knew as a practical matter that orders which Mr. von Opel gave me were being paid for by Uebersee and could have deduced that he was delivering such orders as attorney-in-fact for Uebersee, but the fact of the matter is that I dealt with him as a principal and looked to him for performance on such orders. I do not consider that I acted in any way as an attorney-in-fact or agent for Uebersee in accepting and executing the orders so transmitted

to me by Mr. von Opel which resulted in the investments above described.

The foregoing is as full a statement as I am able to make regarding this subject. I have never had a settlement with Mr. von Opel on the profits with respect to investments which Mr. von Opel made on my advice and transferred to Uebersee in the manner above described, for the reason that none of these securities have been sold and my original recommendation to Mr. von Opel was to make these investments on a long-term basis. However, if asked whether my oral agreement with Mr. von Opel above described respecting a 20% share in profits realized on investments made on my advice applied to the investments in Spur Distributing Co. Inc. and other stock which were so taken over by Uebersee, I should reply that from a legal point of view I recognize I have no claim to a share in such profits as Uebersee might ultimately realize upon a resale of such securities. As above stated, my only arrangement was with Mr. von Opel personally.

I have received compensation as officer of the various companies in which Uebersee so invested, namely as President of Harvard Brewing Co. (Massachusetts), as Vice-President of Spur Distributing Co. Inc., as President of Oil Production Inc., and as President of Oil Refineries Inc. As President of Harvard Brewing Co. (Massachusetts) (which is wholly owned, as hereinafter stated, by Harvard Brewing Co. [Delaware]), I receive a salary of $1,000 per month, and I also have a share in the management fund, which varies according to the profits of the company but in which my share this year should approximate $5,000. As Vice-President of Spur Distributing Co., Inc., I receive $100 a month. As President of Oil Refineries, Inc., which is managed under management contract by Crittenden Engineering Co., as hereinafter explained, I receive $500 per month. As President of Oil Production

Inc., which is managed under similar management contract by Crittenden Engineering Co., I receive $250 a month. In addition, as director of these respective companies as hereinafter stated I receive director's fees aggregating about $2,000 a year.

(b) The course of the investments made by Uebersee Finanz-Korporation A. G. in American corporations and the method of their management to the present time are as follows, according to my knowledge as refreshed by reference to the corporate records and telegrams from the various corporate offices:

1. My first connection with Spur Distributing Co., Inc., a Delaware corporation, occurred in May, 1932, when I was informed that the New York Stock Exchange firm of Burden Cole & Co. were selling a large block of Spur Distributing Co., Inc., by reason of the financial difficulties of the firm. In October, 1931, Mr. Fritz von Opel had informed me that he had previously purchased for his personal account 4,000 shares of this stock. I recommended to him in May, 1932, to buy the stock offered by Burden Cole & Co., and he made an offer of $5 per share for at least 50,000 shares of stock. This stock was delivered to City Bank Farmers Trust Company for account of Uebersee in various instalments beginning June 30, 1932, and paid for out of such account.

The certificate of incorporation of Spur Distributing Co., Inc., shows that it was incorporated in Delaware on April 19, 1928. For the corporate records regarding Spur Distributing Co., Inc., I telegraphed to H. D. Hines, Secretary and Treasurer of the company at Nashville, Tennessee, and under date of June 10, 1935, received the following telegraphic reply:

> "I, H. D. Hines, Secretary and Treasurer of the Spur Distributing Company do hereby certify to the

following statements as true according to the records of the company stop 1, the original incorporators of the Spur Distributing Company were Joseph B. Thomas, J. M. Houghland and Alan Fox stop 2. the following are the names of all the directors of the Spur Distributing Company just preceeding change in control of its capital stock in July nineteen thirty-two J. M. Houghland, Joseph B. Thomas, J. N. Cole, William Burden, H. D. Hines stop at a special meeting of directors held on July twenty first nineteen thirty two the by-laws were amended so as to provide for an increase in the number of directors from five to seven. In addition to the above five directors, Theodore Hoffacker and Werner C. von Clemm were elected to the directorate stop at the annual stockholders meeting held on April eighteenth nineteen thirty-three the following directors were elected for the ensuing year, J. M. Houghland, Joseph B. Thomas, H. D. Hines, William Burden, Herbert W. Goepel, Werner C. von Clemm, Theodore Hoffacker stop at the annual meeting of stockholders held on April third nineteen thirty four the by-laws were amended reducing the directorate from seven to five members. The directors elected at this meeting for the ensuing year were: J. M. Houghland, Joseph B. Thomas, Theodore Hoffacker, Werner C. von Clemm, Herbert W. Goepel stop there was no change in the directorate for the year nineteen thirty-five, all previous members being re-elected by the stockholders at the annual meeting held April second nineteen thirty five stop 3, the books and records of the company are kept by H. D. Hines, Secretary and Treasurer of the company at Nashville, Tennessee. stop 4. the following extract is from the minutes of meeting of board of directors held April third nineteen thirty four stop 'the chair announced the first order of business was the election of officers

for the ensuing year and thereupon, on motion duly made and seconded and unanimously carried, the following officers were duly elected, J. M. Houghland, President, Joseph B. Thomas, Vice President, Theodore Hoffacker, Vice President, H. D. Hines, Secretary & Treasurer, A. E. Peterson, Asst. Treasurer upon motion of Mr. Hoffacker, seconded by Mr. Joseph B. Thomas the compensation of the foregoing officers was fixed effective January first nineteen thirty five as follows. J. M. Houghland, eighteen thousand dollars, Joseph B. Thomas, twelve hundred dolllars, Theodore Hoffacker twelve hundred dollars, H. D. Hines seventy eight hundred dollars, A. E. Peterson thirty three hundred dollars stop 5. the controlling block of stock of the Spur Distributing Company seventy one thousand nine hundred thirty eight shares has been voted by Mr. Theodore Hoffacker at stockholders meeting held on April eighteenth nineteen thirty three and April three nineteen thirty four and April second nineteen thirty five stop.'"

Spur Distributing Co., Inc., has 140,000 shares of no par capital stock outstanding out of 400,000 shares authorized. It is my understanding that Uebersee Finanz-Korporation A. G., owns 75,589 shares; that J. M. Houghland, President, owns 24,000 shares; that Joseph B. Thomas, Vice-President, owns 25,000 shares; and that interests connected with Werner C. von Clemm own 8,000 shares.

There exists and existed at the time of my first knowledge of the company a voting trust under which there are deposited 63,501 shares of stock. The voting trustees at the time of my first acquaintance with the company were Mr. Houghland, Mr. Thomas and Mr. John N. Cole. On or about July 31, 1932, I was elected a voting trustee to replace Mr. Cole. From time to time I have voted at stockholders meetings of the company stock owned by Uebersee under proxies

signed sometimes by Mr. Fritz von Opel as attorney-in-fact for Uebersee and sometimes by Hans Frankenberg and Adolph Gaeng as nominees for Uebersee.

My nominal compensation from Spur Distributing Co., Inc., is due to the fact that my duties as Vice-President do not require much of my time. The company is managed by J. M. Houghland, the President, under a management contract dated January 1, 1933, providing in substance for a salary to him of $1,500 per month and an interest of 5% in the profits of the company plus an additional 5% interest until $200,000 has accrued thereunder. Under this management agreement Mr. Houghland received compensation in the amount of $31,706.56 during 1933 and in the amount of $36,104.27 during 1934. His compensation prior to the management contract was $18,000 a year.

To my knowledge neither Uebersee Finanz-Korporation, A. G., nor any director or representative thereof, nor Mr. Fritz von Opel has ever attempted to participate in the management of the company or purported to give directions with reference thereto. The company's corporate records are in charge of Mr. H. D. Hines, Secretary and Treasurer, and are kept at the offices of the company at Nashville, Tennessee. Its books of account are in charge of Mr. Alver Peterson, Assistant Treasurer, under Mr. Hines, and are kept at the offices in Nashville, Tennessee.

The directors of the company since the beginning of my acquaintance with it have been J. M. Houghland, Joseph B. Thomas, Werner C. von Clemm, John N. Cole (resigned April, 1933), Herbert W. Goepel (elected April, 1933), and myself. Approximately eight meetings of the directors have been held since July, 1932, some in New York and some in Nashville, Tennessee. I have attended them all. Regular stockholders meetings have been held annually in New York, primarily because the smaller stockholders were located here.

2. Harvard Brewing Co. (Delaware) was incorporated in the State of Delaware on December 3, 1932, according to the statement made by the company in its listing application No. 584 to the New York Curb Exchange. According to the same statement Harvard Brewing Co. (Massachusetts) was incorporated in the State of Massachusetts in October, 1932, with 1,000 shares of common stock of no par value; it acquired in December, 1932, the plant of the former Harvard Brewing Co. in Lowell, Massachusetts; and in Uebersee against payment in cash and against an exchange of stock 94,000 further shares of Harvard Brewing Co. (Delaware). The purchase price of part of this stock has not been paid to Union de Placements et de Participations, and the stock is retained by Union as collateral for the debt of Uebersee.

From September 18, 1933, to August 16, 1934, A. C. O. Inc., sold to Uebersee a total of 113,960 shares of Harvard Brewing Co. (Delaware) for a total consideration of $460,810. A. C. O. Inc., is a Delaware corporation organized in November, 1932, of which I was and am President and the principal stockholder of which was and is Amalgamated Patents, S. A., a Luxemburg corporation. I understand that Mr. Fritz von Opel has an interest in Amalgamated Patents, S. A., but that Uebersee Finanz-Korporation, A. G., has not now and has never had any interest of stock ownership in either A. C. O. Inc., or Amalgamated Patents, S. A., directly or indirectly.

On December 7, 1932, I was elected a director and Vice-President of Harvard Brewing Co. (Delaware), and on July 31, 1933, I was elected Chairman of the Board of Harvard Brewing Co. (Massachusetts).

Director meetings of Harvard Brewing Co. (Delaware) are held approximately monthly in the office of Hallgarten & Co., New York, and those of Harvard Brewing Co. (Massachusetts) are held approximately monthly at Lowell, Massachusetts. The books and records of each company

are in the custody of their respective Secretaries, in the case of the former at the company's office in New York, and in the case of the latter in the company's office in Lowell, Massachusetts. Annual stockholders meetings are held regularly, in the case of the former company at the office of Hallgarten & Co., in New York and in the case of the latter company at Lowell, Massachusetts.

I became President of Harvard Brewing Co. (Massachusetts) on June 1, 1934. In addition to my participation in the management fund of Harvard Brewing Co. (Massachusetts), as above described, there also participate six other officers.

I personally own shares of stock of Harvard Brewing Co. (Delaware), and am registered as owner in respect of a further 76,100 shares which are owned principally by A. C. O. Inc., and Union de Placements et de Participations, S. A., and some of which may be owned by Uebersee but are held by A. C. O. Inc., as collateral for the debt above described on the sale of such stock.

To the best of my knowledge neither Uebersee Finanz-Korporation, A. G., nor any director or representative thereof, nor Mr. Fritz von Opel has at any time assumed to direct or to influence the management of either Harvard Brewing Co. (Delaware) or Harvard Brewing Co. (Massachusetts). With respect to this question I addressed a telegram of inquiry to Arthur C. Sullivan, Clerk of Harvard Brewing Co. (Massachusetts) and received under date of June 10, 1935, the following reply addressed to Davis Polk Wardwell Gardiner & Reed:

> "Fritz von Opel elected director Harvard Brewing Co Massachusetts corporation December Nineteen Thirty Three stop Has attended one meeting of directors on May Twenty Seven Nineteen Thirty Five stop Fritz von Opel has never directly or indirectly at any time exercised any control over or been connected

with management of Harvard Brewing Co Massachusetts as director officer or otherwise stop Mr. von Opel has to my knowledge at no time exercised any control over or in any way been connected with the manager of Harvard Brewing Co Massachusetts stop The Uebersee Finanz-Korporation A. G. unknown to me as in any way being connected with Harvard Brewing Co Massachusetts and has at no time exercised control over or been in any way connected with management of Harvard Brewing Co Massachusetts"

I also refer to letter of Hugh Sudall, Secretary of Harvard Brewing Co. (Delaware) dated June 11, 1935, and addressed to Davis Polk Wardwell Gardiner & Read and to the attached statement of Mr. Sudall.

Attached hereto marked Exhibit A-1 is a certificate by Mr. Sullivan as Clerk of Harvard Brewing Co. (Massachusetts) with respect to Mr. von Opel's connection with the corporation. Attached hereto marked Exhibit B-1 are two certificates of Mr. Sullivan as such Clerk with respect to my connection with the corporation, and the organization and operation thereof.

3. I am President of Oil Refineries Inc., a Louisiana corporation organized by Amalgamated Patents, S. A. The following information with regard to Oil Refineries Inc., is furnished me from the corporate records in a telegram from H. T. McGown, Secretary of the corporation, at Shreveport, Louisiana, dated June 11, 1935:

"Replying your request reference Oil Refineries Incorporated stop Corporation was organized March Twenty fourth nineteen thirty three by M. J. Grogan, H. H. McMurphy, Byron A. Irwin, D. J. Herndon and B. P. Crittenden as original incorporators and directors stop at organization meeting of board of directors

held Shreveport Louisiana March twenty eighth nineteen thirty three Byron A. Irwin, D. J. Herndon and H. H. McMurphy resigned as directors and Theodore Hoffacker, H. D. Hines and Albert Ensslen elected to fill vacancies stop at annual meeting of stockholders May second nineteen thirty four Theodore Hoffacker, M. J. Grogan, B. P. Crittenden, A. Ensslen and H. Goepel elected directors and same board reelected at annual meeting held May thirty first nineteen thirty five who now constitute present board stop all meetings shareholders held Shreveport Louisiana stop directors meetings in nineteen thirty three Shreveport March twenty eighth April first April fifth April thirteenth New York April eighteenth Shreveport September ninth in nineteen thirty four at Shreveport January thirteenth New York April third annual meeting Shreveport May second in nineteen thirty five New York February nineteenth February twenty seventh annual meeting Shreveport May thirty first stop qualifying shares transferred immediately after organization and held by Crittenden one share Grogan one share Theodore Hoffacker agent nine hundred ninety eight shares stop full one thousand shares transferred to January seventeenth nineteen thirty four to Hanns Frankenberg and Adolf Gaeng fifty three Rosengarten Starasse Zuerich Switzerland who have been record owners all shares since that date stop books of account kept by T. H. Grobe Treausrer at Shreveport Louisiana corporate record minute books and stock certificate book kept by H. T. McGown Secretary Fort Worth Texas stop at special meeting board of directors held New York April third nineteen thirty four on waiver signed all directors Grogan and Hines absent the following resolution unanimously adopted quote be it resolved that the salary of Mr. Theodore Hoffacker as President of the corporation be and the same is hereby

fixed at the sum of five hundred dollars monthly effective as the first day of March nineteen thirty four and that Mr. Hoffacker as President of the corporation shall furnish to the corporation the use of his office at fifty six Pine Street in the City of New York as the office of the corporation in that city without expense of any sort to the corporation unquote at annual and special meetings of shareholders stock issued in name of Hanns Frankenberg and Adolf Gaeng was voted by Theodore Hoffacker as proxy stop."

After having organized the corporation, Amalgamated Patents, S. A., sold its outstanding 1,000 shares of stock to Uebersee Finanz-Korporation, A. G., for $10,000 on April 27, 1933, and a $200,000 Five-Year Mortgage 6% Note on May 31, 1933, for $200,000.

Regular directors meetings have been held principally at Shreveport, Louisiana, but sometimes in New York. Stockholders meetings have been regularly held in Shreveport, Louisiana. The place of business of the corporation is in Shreveport, Louisiana, where its books and corporate records are kept.

The company is managed under a management contract dated April 18, 1933, by Crittenden Engineering Co., a Delaware corporation, for a compensation which amounted to $20,516.28 for the year ending February 28, 1934, and to $14,400 for the year ending February 28, 1935.

To my knowledge neither Uebersee Finanz-Korporation, A. G., nor any director or representative thereof, nor Mr. Fritz von Opel has at any time assumed to direct or influence the management of the company. On this subject I telegraphed M. J. Grogan, Vice-President of the company, and received through Davis Polk Wardwell Gardiner & Reed the following reply dated June 11, 1935:

"Retel the management of Oil Refineries Inc. has not at any time been interfered with by Uebersee Fi-

nanz Korp AG and we have never received any communication of any kind from them and the same is true from Mr Fritz von Opel whom we have only met once and who is not a director or officer of our company."

4. I am also President of Oil Production Inc., a Louisiana corporation, and was likewise organized by Amalgamated Patents, S. A. The facts of record with respect to this corporation are contained in a telegram addressed to me from Shreveport, Louisiana, from Mr. H. T. McGowan as Secretary under date of June 10, 1935, as follows:

"Replying your request reference Oil Production Incorporated stop Corporation was organized April twenty ninth nineteen thirty three by H. T. McGowan, B. P. Crittenden, M. J. Grogan, Byron A. Irwin and D. J. Herndon as original incorporates and directors stop at organization meeting of Board of Directors held Shreveport Louisiana McGowan Irwin and Herndon resigned as directors and Theodore Hoffacker, Albert Ensslen and Herbert Goepel elected to fill vacancies stop at annual meeting shareholder May second nineteen thirty four Theodore Hoffacker, M. J. Grogan, B. P. Crittenden, A. Ensslen and H. Goepel elected directors and same board reelected at annual meeting held May thirty first nineteen thirty five who now constitute present board stop special meeting shareholders held fifty six Pine Street, New York City May fifteenth nineteen thirty three for purpose ratification issuance of bonds stop annual meeting of shareholders held Shreveport May second nineteen thirty four and May thirty first nineteen thirty five stop directors meetings held in nineteen thirty three Shreveport April twenty ninth May second May twelfth New York May fifteen Tyler Texas June nineteenth Shreveport June thirtieth New York July eighteenth July

twenty fourth Shreveport July twenty fifth September ninth New York September eighteenth October twentieth held in nineteen thirty four at Shreveport January thirteenth New York March ninth April third annual meeting Shreveport May second New York August twenty fourth Shreveport September twenty seventh November ninth and in nineteen thirty five New York February twenty eighth April twenty second annual meeting Shreveport May thirty first stop qualifying shares transferred immediately after organization and shares held by Crittenden two M. J. Grogan two Theodore Hoffacker Agent seventeen hundred ninety six until October twenty third nineteen thirty four at which time corporation acquired by purchase from Theodore Hoffacker Agent two hundred shares leaving outstanding fifteen hundred ninety six shares Theodore Hoffacker Agent stop books of account kept by T. H. Grobe Treasurer at Shreveport Louisiana corporate records minute books and stock certificate book kept by H. T. McGown Secretary Fort Worth Texas stop at special meeting of Board of Directors held New York April third nineteen thirty four on waiver signed all directors Grogan only absent following resolution unanimously adopted quoted be it resolved that the salary of Mr. Theodore Hoffacker as President of the Corporation be and the same is hereby fixed at the sum of two hundred fifty dollars monthly effective as of the first day of March nineteen thirty four and that Mr. Hoffacker as President of the Corporation shall furnish to the Corporation the use of his office at fifty six Pine Street in the City of New York as the office of the company in that city without expense of any sort to the corporation unquote at annual and special meetings of shareholders stock issued in name of Theodore Hoffacker agent was voted by him in person and two shares each outstanding in name of Grogan and Crittenden were

voted by them in person stop certificate of incorporation dated May first nineteen thirty three follows quote State of Louisiana I the undersigned Assistant Secretary of State of the State of Louisiana do hereby certify that a certified copy of articles of incorporation of the Oil Production, Inc., domiciled at Shreveport parish of Caddo State of Louisiana A corporation organized under the provisions of act no. two fifty of the session acts of the legislature of Louisiana approved July eighteenth nineteenth twenty eight being an act before Cecil Morgan a notary public in and for said parish and State of date the twenty ninth day of Aprif nineteen thirty three and recorded in blank book no. blank folio blank of the records of the recorder of the parish of Caddo of date the twenty ninth day of April nineteen thirty three at seven thirty five o'clock pm the date and hour when the corporate existence of the said corporation began has been filed and recorded in this office in book record of charters no. one forty two folio blank *et seq* on the first day of May nineteen thirty three and the incorporation tax and all other fees having been paid as required by law the said corporation is authorized to transact business in this state subject to the restrictions imposed by law and especially the provisions of act no. two fifty of the legislature of Louisiana approved July eighteenth nineteen twenty eight period witness my signature and authenticated with the impress of my seal of office at the state capital in the City of Baton Rouge this first day of May A. D. nineteen thirty three signed R. H. Flowers Assistant Secretary of State seal unquote to all of which I certify as Secretary of Oil Production Incorporated."

The entire outstanding capital stock of Oil Production, Inc., was purchased by Amalgamated Patents, S. A., and

by A. C. O. Inc., 190 shares being purchased by the former company on May 23, 1933, for $19,000 and 1610 shares by A. C. O. Inc., on September 21, 1933, for $161,000. The reference to me as "agent" in the above-quoted telegram from Mr. McGown refers to me as agent for Amalgamated Patents, S. A., and for A. C. O. Inc., respectively with regard to the shares so subscribed by them. All these shares are still retained by these companies except for 200 shares which were redeemed on October 11, 1934.

The outstanding bonds of Oil Production Inc., in the amount of $451,000 (reduced from $523,000 through redemption on October 24, 1934) are all owned by Uebersee Finanz-Korporation, A. G., which purchased them on various dates beginning July 7, 1933, from A. C. O. Inc. These bonds, which A. C. O. Inc., sold to Uebersee at 100, were purchased by it from Oil Production Inc., for 70.

The place of business of Oil Production Inc., is Shreveport, Louisiana. Its corporate books and records have been kept, and its directors and stockholders meetings conducted in a manner substantially similar to those of Oil Refineries Inc., as above stated.

As in the case of Oil Refineries Inc., neither Uebersee Finanz-Korporation, A. G., nor any director or representative thereof, nor Mr. Fritz von Opel has influenced, nor sought to influence the management of the company. On this subject I quote a telegram received by me from Mr. Grogan as Vice-President of Oil Production Inc., through Davis Polk Wardwell Gardiner & Reed dated June 11, 1935, as follows:

> "Retel the management of Oil Production Inc has not at any time been interfered with by Uebersee Finanz Korp AG and we have never received any communication of any kind from them and the same is true of Mr Fritz von Opel whom we have only met once and who is not a director or officer of our company"

Oil Production Inc., like Oil Refineries Inc., is managed under a contract dated January 13, 1934, by Crittenden Engineering Co. The compensation paid to Crittenden Engineering Co., under this contract was $3,414.33 for the period ended February 28, 1934, and $23,029.05 for the period ended February 28, 1935.

(c) In consequence of my knowledge of these companies I state categorically that they function independently of any external control and with complete and entire regard to due corporate forms despite the interest that Uebersee has in them as herein stated, and that Uebersee Finanz-Korporation, A. G., is not doing business in any form in the United States through the agency or by the means of these companies. Nor is Uebersee Finanz-Korporation, A. G., engaged in business in the United States in any way or form through any other company or any agent to the best of my knowledge and belief.

THEODORE HOFFACKER.

Sworn to before me this
12th day of June, 1935.

WILLIAM PEYTON MARIN,
Notary Public.
Kings Co. Clk's No. 758, Reg. No. 7380,
N. Y. Co. Clk's No. 965, Reg. No. 7M583,
Commission expires March 30, 1937.

(Seal)

AFFIDAVIT OF FRITZ VON OPEL, DATED JUNE 12, 1935.

IN THE
DEPARTMENT OF THE TREASURY
OF THE UNITED STATES OF AMERICA.

In the Matter

of

The Application of UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT, regarding Gold held for its Account in the United States.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

FRITZ VON OPEL, being duly sworn, says:

I made an affidavit herein verified June 7, 1935. I have read the affidavit herein of Mr. Theodore Hoffacker verified June 12, 1935, and state that the same is a correct statement of my recollection with regard to the conversations between us and other acts performed by me as set forth by Mr. Hoffacker.

To my knowledge Uebersee Finanz-Korporation A. G. and I myself have never sought in any way to influence or dominate the activities of Spur Distributing Co., Inc., or Harvard Brewing Co. (Delaware) or Harvard Brewing Co.

(Massachusetts) or Oil Production Inc., or Oil Refineries Inc., except in so far as Uebersee might lawfully control the operations of those companies in its capacity as stockholder. The operation of those companies has been at all times independent and separate from the operation of Uebersee Finanz-Korporation A. G.

Investments of Uebersee Finanz-Korporation A. G. outside the United States exist in Switzerland to the extent of several hundred thousand francs, in Africa where assets are held by an English company in which Uebersee owns stock representing an investment by Uebersee of about 120,000 English shillings, and in Germany, where formerly Uebersee owned bonds to the value of several hundred thousand German marks. My knowledge on this subject has been obtained from conversations with Dr. Frankenberg and from examining the records of Uebersee in Zurich.

FRITZ VON OPEL.

Sworn to before me this
12th day of June, 1935.

WILLIAM PEYTON MARIN,
Notary Public
Kings Co. Clk's No. 758, Reg. No. 7380,
N. Y. Co. Clk's No. 965, Reg. No. 7M583,
Commission expires March 30, 1937.

(Seal)

EXHIBITS ATTACHED TO AFFIDAVITS OF MEIER AND VON OPEL.

Exhibit A.

Copy

Handelregister
(Register of Commerce)
Zurich

(Stamp)

By-Laws of
Uebersee Finanz Korporation A. G.
Overseas Finance Corporation Ltd.

A. *Firm, Name, Domicile, Purpose*

Paragraph 1.

Under the firm name "Uebersee Finanz-Korporation A.G." "Overseas Finance-Corporation Ltd." there exists based on these By-Laws a joint stock company, with domicile at Zurich.

Paragraph 2.

Purpose of the Corporation is the transaction of foreign Banking and Commercial business, as well as any kind of Banking and Commercial business, and the acquisition and administration of participations. The Corporation may conclude any and all legal transactions which it may consider as conducive to the achievement of the purpose of the Corporation; it is also entitled to acquire and dispose of real estate.

Paragraph 3.

The duration of the life of the corporation is indefinite.

B. *Capital of the Corporation*

Paragraph 4.

The capital of the Corporation amounts to Fr. 500,000, consisting of 100 bearer shares with numbers 1-100 at Fr. 5,000. par value. The subscribers to the stock are liable only for the payment of 50 per cent of the par value, in accordance with O. R. Section 636, paragraph 3.

Paragraph 5.

The amount of the payment will be fixed by the general meeting.

The latter is also authorized to increase or reduce the stock capital in conformity with the capital requirements, and also to convert the bearer shares into shares registered in a name, as well as to amortize the stock in accordance with O. R. Section 628, paragraph 1. It is furthermore authorized to issue bonds.

C. *Organization*

The organs of the Corporation are:

I. The general meeting.

II. The Board of Directors.

III. The Comptroller.

I. *General Meeting*

Paragraph 6.

The functions of the general meeting are essentially the following:

1. Adoption of the annual accounts, the balance sheet and the report of the directors, as well as of the Comptroller's report; resolution as to the application of the net earnings and release of the directors.

2. Election of the President and members of the Board of Directors, also of the Comptroller and any special delegates, if any, in accordance with O. R. Section 650.

3. Resolutions on motions of the Board of Directors, also on motions of individual stockholders.

4. Alterations of the By-Laws.

5. Dissolution of the Corporation.

6. Resolutions as per paragraph 5.

Paragraph 7.

The regular general meeting takes place within four months after the conclusion of the fiscal year.

Special general meetings are called, in the discretion of the Board of Directors, or within two weeks if requested by one or more stockholders representing at least one-tenth of the stock capital. Such request to be made by such stockholders or their representatives in written form stating the purpose thereof. If all stockholders are represented, a special general meeting may be held at any time.

Paragraph 8.

The annual accounts and the Comptroller's report are open to the inspection of the stockholders in the office of the Corporation for ten days preceding the regular general meeting.

Paragraph 9.

The President of the Board of Directors or in his absence another member of the Board of Directors will preside at the general meeting.

The Chairman is entitled to vote and has the casting vote.

Paragraph 10.

Each represented share of stock is entitled to ten votes. No stockholder may assemble in his own hand more than a fifth part of the votes represented.

Paragraph 11.

The general meeting passes its resolutions and executes its elections by absolute majority of the votes represented; it is competent to pass resolutions if at least one-fourth of all shares of stock is validly represented.

There are excepted resolutions in reference to Lit. 4, 5 and 6 of paragraph 6. For such resolutions a two-thirds majority of the entire stock capital is required.

In the event of a regularly called general meeting not being competent to pass resolutions, the Board of Directors is required to call a second general meeting within eight days, which will then be authorized to vote with absolute majority on the matters before the first general meeting irrespective of the number of shares of stock represented.

Paragraph 12.

Divisions will be made by open or secret vote as decided by the majority of those present.

Paragraph 13.

Motions of stockholders have to be delivered to the Board of Directors at least fourteen days before the meeting and the Board of Directors has to present the same to the meeting. The meeting may decide as to the time at which such motions will be dealt with. If all stockholders are represented, motions which have been made at the meeting itself may also be voted on.

Paragraph 14.

The call for all general meetings has to be issued at least ten days previously.

II. *The Board of Directors*

Paragraph 15.

The Board of Directors consists of one to five members. The number of the members will be decided by the general meeting.

Members of the Board of Directors must be stockholders and have to deposit with the Corporation at least one share of stock.

Paragraph 16.

The term of office is one year. The retiring members are subject to re-election. Should any substitutes become necessary, the elections for same will take place at the next general meeting.

Paragraph 17.

The Board of Directors undertakes all those functions which are not expressly reserved for the general meeting either by law or the Corporation's By-Laws.

The Board of Directors may delegate a part of its functions to one or more of its members, or to third parties who need not be members of the Corporation.

In particular it is the duty of the Board of Directors to

1. Exercise supervision of the entire conduct of the business.

2. To appoint and release managers and agents (powers of attorney).

3. Acquire real estate.

4. Prepare all business to be placed before the general meeting.

5. Effectuate the resolutions of the general meeting.

Paragraph 18.

The meetings of the Board of Directors are called by the President. It is competent for resolutions, if at least two members, or the President alone, are present. The party presiding at such meetings has the casting vote.

III. *The Comptroller*

Paragraph 19.

The general meeting entrusts one or more Comptrollers who need not be members of the Corporation with the task of submitting to the general meeting a report on the balance sheet and the accounts presented by the Board of Directors. The audit of the balance sheet and of the profit and loss account is to be made in accordance with the provisions of the law of obligations (obligationenrecht).

D. Annual Accounts and Division of Net Earnings

Paragraph 20.

The books are to be closed on December 31st. Inventory and balance sheet are to be made as of that date.

Balance sheet as well as profit and loss account, are to be rendered in accordance with the provisions of O. R. Section 656 and subsequent ones.

Paragraph 21.

The division of earnings will be undertaken by the general meeting on motion of the Board of Directors, provided, however, that such division may only be made after ten per cent have been transferred to reserve account.

E. Dissolution of the Corporation

Paragraph 22.

The dissolution of the Corporation takes place in accordance with legal requirements.

F. Announcements

Paragraph 23.

The publications of the Corporation will be announced in the Schweizerische Handelsamtsblatt (Swiss official bulletin of Commerce). Non-local stockholders may designate a special representative to whom a special announcement is to be sent by registered mail.

Zurich, May 24, 1922.

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for the correctness of the Company:
Zurich, May 24, 1933

br.

HANDELSREGISTER
DES KANTONS ZUERICH.
(Register of Commerce
of Canton Zurich)
(Signature)

Tax and Stamp. Fr. 15.40
(seal)

EXHIBIT B.

CERTIFICATE

The undersigned official Bureau hereby certifies that the firm Uebersee Finanz-Korporation A. G.
Overseas Finance-Corporation Limited
domiciled at Zurich 1, St. Peterstrasse 16

a joint stock company existing since June 3, 1922 was entered in the Register of Commerce.
Capital Frs. 500,000 (francs five hundred thousand) divided into 100 bearer shares at Frs. 5,000 each fully paid.....
....The Corporation may be legally bound by signature—any two jointly—of the following:

the President of the Board of Directors:

Dr. Eugen Meier, attorney-at-law, of Stäfa, domiciled in Liestal;

the members of the Board of Directors:

Dr. Hanns Frankenberg, Banker, of Austrian Citizenship, in Zurich,

Dr. Josef Henggeler, attorney-at-law, of Unterägeri, domiciled in Höngg.

Purpose: Transaction of foreign Banking and Commercial business, as well as any other kind of Banking and Commercial business, also acquisition and administration of participations, etc., etc. (Last publication in the Swiss official bulletin of Commerce (Schweiz. Handelsamtsblatt) No. 145 of June 1932, page 1553.) Volume F folio 16246.

Zurich, August 15, 1933

* * * * *

EXHIBIT K.

Minutes of the 9th Regular General Meeting of
UEBERSEE FINANZ KORPORATION, A. G. ZURICH
Saturday, March 14, 1931, at 10 A. M.
at the office of Dr. Martin Bloch,
Bahnhofstrasse 82, Zurich I.

Present on their own behalf and as proxy of stockholders:

Dr. Martin Bloch, Attorney-at-Law, Zurich I,
Mr. Adolf Gaeng, Certified Accountant, Zurich 6.

Mr. Martin Bloch took the chair, and took note, that all stockholders were present or represented. Dr. Martin Bloch further took note that the notice for the general meeting had been issued in accordance with the provision of the by-laws, and that the meeting was competent to pass resolutions regarding the subjects on the agenda.

Subject No. 1.—Presentation of the annual report, and of the balance sheet for the year 1930.

Dr. Bloch states that the annual report and accounts have been open to inspection by stockholders in his office during the period provided for in the by-laws. He said that due to the low level of stock prices a large loss had occurred in the business year just expired, and that the business year 1930 closed with a loss of Frcs. 18,680.23, which changed the gain carried forward from January 1, 1930 of Frcs. 3,614.50 to a loss of Frcs. 15,065.73 carried forward per January 1, 1931.

Subject No. 2—Report of the Comptroller.

Dr. Martin Bloch read to the meeting the written report of the Comptroller of March 2, 1931. The comptroller moved that the balance sheet and profit and loss statement as of December 31, 1930, be adopted, and those responsible be released from their responsibilities.

Subject No. 3—Release of Board of Directors and Comptroller.

In compliance with the motion of the comptroller the balance sheet and profit and loss statement as of December 31, 1930, was unanimously adopted and declared final; also the report of the comptroller of March 2, 1931, was adopted.

The Board of Directors and Comptroller were released with an unanimous vote of thanks.

Subject No. 4—Election of the Board of Directors and of the Comptroller.

There were elected as director for a new term:
Dr. Martin Bloch, Attorney at Law, Zurich I, and as Comptroller:
Mr. Adolf Gaeng, Certified Accountant, Zurich 6.

General Remarks: In the resolutions and elections under Subjects No. 3 and 4 the stockholders present or their proxies have refrained from voting, as far as their own person was in question.
Close of the meeting 10:30.

Chairman and acting Secretary
(signed) Dr. Martin Bloch.

EXHIBIT L.

Minutes of the Tenth Regular General Meeting of

UEBERSEE FINANZ KORPORATION, A. G., ZURICH
held on Friday, May 6th, 1932, at 9 o'clock in the forenoon at the domicile of the Corporation, Bahnhofstrasse 82, Zurich 1.

Present: Dr. Martin Bloch, attorney-at-law, director, Zurich 1,
Mr. Adolf Gäng, comptroller, Zurich 6,
Dr. Hanns Frankenberg, Banker, Zurich 1,
Dr. Jós. Henggeler, attorney-at-law, Zurich 1,
Dr. Hugo Wyler, as acting secretary

Dr. Martin Bloch presided as chairman, and took note that all stockholders were present or represented, viz:

Mr. Fritz von Opel, represented by Dr. Hanns Frankenberg, Zurich, by virtue of written proxy of

Apr. 29 1932	497 shares
Dr. Martin Bloch	2 "
Dr. Hanns Frankenberg	1 "
Total	500 shares

The voting power of Dr. Frankenberg was reduced to 100 votes.

On inquiry by Dr. Martin Bloch all stockholders present and by proxy acknowledged the notice issued as in order and binding. The meeting was, therefore, competent for resolutions on the subjects on the agenda. Dr. Hugo Wyler was appointed acting secretary, Dr. Henggeler as teller of votes.

AGENDA

1. Presentation of annual report and of annual balance sheet and profit and loss account for the year 1931.
2. Report of the comptroller.
3. Release of Board of Directors and comptroller.
4. Election of Board of Directors and comptroller.
5. Various subjects.

Subject No. 1—Presentation of annual report and annual balance sheet and profit and loss account for the year 1931

Dr. Martin Bloch reported, that in the year 1931 the continuing depression caused a further loss of Frs. 6,789.38 composed of general expenses, interest and taxes. The total loss, therefore, amounted to Frs. 21,855.11 which was carried forward to new account as of January 1, 1932.

Subject No. 2—Report of the Comptroller

Dr. Hugo Wyler read to the meeting the written report of the comptroller of April 2, 1932. The comptroller moved that the balance sheet and profit and loss account as of Dec. 31, 1931 be adopted, and those responsible be released.

Subject No. 3—Release of Board of Directors and Comptroller

In compliance with the motion of the comptroller, the balance sheet and profit and loss account as of Dec. 31, 1931 was unanimously adopted and declared final; also the comptroller's report of April 2, 1931 was adopted.

The Board of Directors and the comptroller were in separate, unanimous, votes released with thanks. Dr. Martin Bloch was also released for the period from Jan. 1, 1932 to May 6, 1932. It was duly noted that Dr. Martin Bloch took no part in these votes.

Subject No. 4—Election of Board of Directors and Comptroller

Dr. Martin Bloch handed in his resignation as a director of the Corporation. The general meeting gave him a vote of thanks for his many years' activity on behalf of the corporation. Thereupon there were elected as members of the Board of Directors:

Dr. Eugen Meier von Stäfa, attorney-at-law, Liestal, as Pres.,
Dr. Hanns Frankenberg, Banker, of Austrian Citizenship, Zurich 7,
Dr. Josef Henggeler, attorney-at-law, of Unterägeri, Höngg.

The members of the Board of Directors to sign for the Corporation, any two jointly.

The domicile of the Corporation was removed to St. Peterstrasse 16.

There was elected as comptroller
Mr. Adolf Gäng, certified accountant, Zurich 6.

Subject No. 5—Various

Dr. Frankenberg made the motion to pay in the remaining 50% of the stock capital. According to paragraph 4 of the by-laws there were, therefore, Frs. 250,000 to pay in.
There was unanimously resolved:

1. to pay in the stock capital—of which heretofore 50% had been paid in, in full.

2. to authorize the Board of Directors to call up the outstanding 50% in accordance with the legal provisions of the Swiss Law of Obligations.

The meeting was adjourned at 9:15 o'clock.

The Chairman

(Signed) Dr. Martin Bloch
(Signed) Dr. Wyler,
Acting Secretary

Exhibit M.

Minutes of General Meeting of
Ueberseé Finanz Korporation, A. G., Zurich
held on June 1, 1932

Dr. Hanns Frankenberg, representing the President of the Board of Directors, took note of the regular notice issued, and ascertained representation of the entire stock capital.

Dr. J. Henggeler was appointed as acting Secretary.
The only subject on the agenda was:

Establishment of the fact that the stock capital had been paid-in in full.

The chairman of the meeting established the fact, that according to a receipt of Adler & Co., A. G., in favor of the Corporation, the amount of Frs. 250,000, was paid into the said bank in satisfaction of the remaining 50% of the stock capital. The receipt referred to of Adler & Co., A. G., was presented and annexed in the original to the minutes.

The Corporation, supported thereby, established the fact of the full payment of the stock capital, and authorized and directed the Board of Directors, to notify the Register of Commerce, Zurich, of this resolution.

These resolutions were unanimously adopted.

(Signed) Dr. Frankenberg,
Chairman

(Signed) Dr. Henggler,
Acting Secretary

Exhibit N.

Minutes of the Eleventh Regular General Meeting of
Uebersee Finanz Korporation, A. G., Zurich
Tuesday, July 12, 1933, at 10:30 A. M.
at the domicile of the Corporation,
St. Peterstrasse 16, Zurich 1

There were present on their own behalf and as proxy for stockholders:

Dr. Eugen Meier, attorney-at-law, Liestal, President of the Board of Directors,

Dr. Hanns Frankenberg, Banker, Zurich 1, member of the Board of Directors,
Mr. Adolf Gäng, certified accountant, Zurich 6.

The chairman took note that all stockholders were present or represented. The stock was presented for control. No stockholder was enabled to represent more than 20 votes.

The stockholders declared that the notice of call for the general meeting was issued in accordance with the by-laws and recognized by them as such.

The annual balance sheet and profit and loss account, and the comptroller's report were open to inspection by stockholders in the office of the Corporation on and after June 20th, in compliance with paragraph 8 of the by-laws.

Dr. Hanns Frankenberg was appointed acting secretary.

Mr. Adolf Gäng as teller of votes.

AGENDA

1. Presentation of annual report and of annual balance sheet and profit and loss account for the year 1932,

2. Report of Comptroller,

3. Release of the Board of Directors and Comptroller,

4. Election of the Board of Directors and Comptroller,

5. Various

1. *Presentation of annual report and of annual balance sheet and profit and loss account for the year 1932.*

There was written off from the holdings of Vermag, A. G. stock, due to losses in that company, 40%=Frs. 40,000—Profits made elsewhere were not sufficient to offset this loss.

2. *Report of Comptroller:*

The same reads:

"As Comptroller of Overseas Finance Corporation Ltd., Zurich, I hereby confirm that the accounts for the business year 1932 (Jan. 1. to December 31, 1932) were kept in proper order and that the balance sheet and profit and loss account as of December 31, 1932 were drawn up correctly.

There were vouchers for all entries, and the cash balance of Frcs. 1.250.—as of December 31, 1932, respectively as of to-day, is at hand in currency. Balance Sheet and Profit and Loss account comply with the regulations of the O. R. (Unable to ascertain what this means—The Translator) and show for the year 1932 a loss of Frcs. 3,197.39, which was carried forward to new accoun., thereby increasing the loss carried forward from the previous year of Frcs. 21,855.11 to Frcs. 25.052.50 as of January 1, 1933.

I recommend adoption of the accounts with release of those responsible.

Yours very truly

(signed) ADOLF GAENG".

3. *Release of the Board of Directors and Comptroller.*

The meeting unanimously resolved the adoption of the accounts and of the report of the Comptroller. Following this the Board of Directors and the Comptroller were given their release in separate votes which in each case were not participated in by those concerned.

4. *Election of Board of Directors and Comptroller.*

There were re-elected for a further term of one year:

to the Board of Directors:

Dr. Hanns Frankenberg, Banker, Zurich 1,

Dr. J. Henggeler, Attorney at Law, Zurich,

Dr. Eugen Meier do Liestal.

as Comptroller:

Mr. Adolf Gaeng, Expert Accountant, Zurich 6.

Adjournment of meeting 11:30 o'clock.

(signed) Dr. E. Meier,
Chairman

(signed) Dr. Frankenberg,
Acting Secretary.

Exhibit O.

Minutes of the Twelfth General Meeting of

Uebersee Finanz Korporation, A. G., Zurich

held on Friday, April 20, 1934, at 6:00 o'clock in the afternoon at the domicile of the Corporation, St. Peterstrasse 16, Zurich 1.

Present on their own behalf and as proxies for stockholders:

Dr. Eugene Meier, attorney-at-law, Liestal, President of the Board of Directors,

Dr. Hanns Frankenberg, Zurich, member of the Board of Directors,

Dr. J. Henggeler, attorney-at-law, Zurich 1, member of the Board of Directors,

Mr. Adolf Gäng, certified accountant, Zurich 6.

The chairman took note that all stockholders were present or represented. No stockholder was entitled to represent more than 20 votes. The stockholders declared, that the notice of call of the general meeting was expressly recognized by them as having been issued in accordance with the provisions of the By-Laws.

Dr. Frankenberg was designated acting secretary, Mr. Adolf Gäng teller of votes.

AGENDA

1. Presentation of annual report and of annual balance sheet and profit and loss account for the year 1933; report of the comptroller.

2. Adoption of annual accounts; release of Board of Directors and comptroller.

3. Election of Board of Directors and Comptroller.

4. Various.

1. *Presentation of annual report and annual balance sheet and profit and loss account for the year 1933, report of the comptroller.*

The balance sheet as of Dec. 31, 1933 made the following showing:

assets	frs.	940,912.05
liabilities		922,957.–
profit for 1933	frs.	17,955.05

The profit for 1933 was set off against the loss carried forward from the previous year. The accounts were exam-

ined by the comptroller, Mr. Adolf Gäng, expert accountant, Zurich 6, who submitted the following report:

"The undersigned, comptroller of your Corporation, has examined the accounts of Overseas Finance Corporation, Ltd., Zurich, for the business year 1933 (January 1 to December 31, 1933) and the balance sheet with profit and loss statement as of December 31, 1933. The books and vouchers were properly kept. The cash balance of frs. 1,250. was on hand in currency. Assets and liabilities set up. Balance Sheet and Profit and Loss statement as of Dec. 31, 1933 were properly drawn up in acordance with regulations, and show a profit of *frs. 17,955.05*, thereby reducing the loss carried forward from the previous year from *frs. 25,052.50* to *frs. 7,097.45* as of January 1, 1934. I recommend adoption of the accounts and release of those responsible."

2. *Release of Board of Directors and Comptroller*

The meeting unanimously resolved to adopt the annual accounts. Following this and by separate votes the Board of Directors and the Comptroller were released, with those concerned in either case not voting.

3. *Election of the Board of Directors and of the Comptroller*

There were reelected for a further term of one year:

to the Board of Directors

Dr. Hanns Frankenberg, Banker, Zurich 1,
Dr. J. Henggeler, attorney-at-law, Zurich 1,
Dr. Eugen Meier, attorney-at-law, Liestal,

as Comptroller

Mr. Adolf Gäng, expert accountant, Zurich 6

Meeting was adjourned 6:30 o'clock.

for the correctness of the minutes

(signed) Dr. Frankenberg, Acting Secretary
(signed) Dr. E. Meier, President

Exhibit P.

Minutes of the Thirteenth Regular General Meeting of

Uebersee Finanz Korporation, A. G., Zurich

at the domicile of the Corporation,
St. Peterstrasse 16, Zurich 1

Thursday, April 11, 1935, at 3 P. M.

Present on their own behalf and as proxies for stockholders:

Dr. Eugen Meier, attorney-at-law, Iiestal,
President of the Board of Directors,
with 20 shares,

Dr. Hanns Frankenberg, Zurich,
member of the Board of Directors,
with 30 shares,

Dr. J. Henggeler, attorney-at-law, Zurich 1,
member of the Board of Directors,
with 20 shares,

Mr. Adolph Gäng, certified accountant, Zurich 6,
with 30 shares

The chairman took note, that all stockholders are present and represented. The stock was presented for control, no stockholder being entitled to represent more than 20 votes. The stockholders declared, that the notice of call of the general meeting was expressly recognized by them as having been issued in accordance with the provisions of the By-Laws.

The annual balance sheet and profit and loss account, as well as the comptroller's report were open to inspection by stockholders in the office of the Corporation on and after April 1st, in compliance with paragraph 8 of the By-Laws.

Dr. Frankenberg was designated acting secretary, and Mr. Adolph Gäng teller of votes.

AGENDA

1. Presentation of annual report, and annual balance sheet and profit and loss account for the year 1934; report of the comptroller.

2. Adoption of the annual accounts, release of the Board of Directors and Comptroller.

3. Election of the Board of Directors and Comptroller.

4. Various.

1. *Presentation of annual report and annual balance sheet and profit and loss account for the year 1934; report of Comptroller*

The balance sheet as of December 31, 1934, showed on both sides a total of frs. 7,118,275. The profit and loss account showed a net profit of frs. 8,834.30, which was applied against the loss of frs. 7,097.45 carried forward from the previous year; the balance of profit of frs. 1,736.85 was carried forward to new account.

The accounts were examined by the comptroller, Mr. Adolf Gäng, expert accountant, Zurich 6; he made a motion to adopt the accounts, with release of those responsible.

2. *Release of the Board of Directors and of the Comptroller*

The meeting unanimously resolved the adoption of the annual accounts. Following this, and by separate votes, release was given to the Board of Directors and to the Comptroller, with those concerned in either case not voting.

3. *Election of the Board of Directors and of the Comptroller*

There were reelected for a further term of one year:

to the Board of Directors

Dr. Hanns Frankenberg, Banker, Zurich 1,
Dr. J. Henggeler, attorney-at-law, Zurich 1,
Dr. Eugen Meier, attorney-at-law, Liestal

as Comptroller,

Mr. Adolph Gäng, expert accountant, Zurich 6.

4. *Various*

(a) The President called attention to the fact, that according to the tenor of paragraph 2 of the By-Laws, the corporation must be placed under the banking law. To avoid this, the By-Laws would have to be changed, and in view of the status of the gold matter in the U.S.A., a change of By-Laws should, at the present moment, be abstained from.

//: Application to the Banking Commission was to be made by the end of April with the declaration that as a

matter of fact no banking business was transacted, and the acceptance of deposits from the public was not solicited. Furthermore a conformable change of the By-Laws was intended to be made shortly.

(b) Remuneration of the members of the Board of Directors was agreed upon at frs. 1,000. each, to be charged to expense account.

Meeting was adourned at 3:30 P. M.

for the correctness of the minutes

(Signed) DR. E. MEIER, PRESIDENT
(Signed) DR. FRANKENBERG, Acting Secretary

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR LICENSE

IN THE DEPARTMENT OF THE TREASURY,

OF THE UNITED STATES OF AMERICA.

In the Matter

of

The Application of UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT, regarding Gold held for its Account in the United States.

STATEMENT.

Uebersee Finanz-Korporation A.-G., a corporation under Swiss law, having its office and place of business in Zurich,

originally applied on Form TG-18 on or about May 9, 1934, for a license to transfer gold coin held for its account by Ladenburg Thalmann & Co., New York, to the Federal Reserve Bank of New York, to be held in custody for the Banque Nationale Suisse. The application was made on Form TG-18 and was verified by the President of Zurich in April, 1934.*

After the making of this application, the matter remained under consideration of the Treasury for about a year. At the request of Federal Reserve Bank of New York some additional information was supplied on July 27, 1934, in the form of an affidavit verified by Friedrich Wille on that date regarding the nature and extent of the business done by Uebersee with Ladenburg Thalmann & Co., and in the form of a letter by Ladenburg Thalmann & Co. with attached documents on October 16, 1934. It appears also that the Treasury conferred with Mr. Theodore Hoffacker of Theodore Hoffacker & Co., New York, investment bankers, in Washington on July 19, 1934, and with Dr. Eugen Meier, President of the company, in Washington on April 29, 1935.

On May 4, 1935, the Treasury addressed a letter to the corporation denying its application and requiring delivery of the gold.

Thereupon on May 6, 1935, Dr. Meier as President of the corporation retained us to represent it with reference to the application, and a hearing was accorded us by the general counsel for the Treasury on May 15, 1935, at which we set forth briefly the facts with respect to Uebersee Finanz-Korporation A. G. and its assets as we had learned them from Dr. Meier and from Mr. Fritz von Opel,

* We do not have available to us a conformed copy of the application giving the exact date.

the controlling stockholder*. Pursuant to permission kindly granted by the Treasury, we have communicated by cable with Zurich for the documents immediately available, and have assembled and are submitting in affidavit form these documents and the relevant facts bearing on the acquisition by the corporation of the gold here involved.

The present application concerns gold coins of the United States to the amount of $1,250,000 held for the account of the applicant corporation by Ladenburg Thalmann & Co., 25 Broad Street, New York, N. Y. It is our understanding that, if the application on Form TG-18 be granted, the gold coins will be exchanged against bullion and the bullion transferred to the account of the Banque Nationale Suisse with Federal Reserve Bank of New York.

It is our belief that the underlying facts, here presented for the first time, fully support the claim of the corporation to title in the gold and to immunity from the American jurisdiction, and justify and require the granting of the application heretofore submitted in its behalf.

Supplementary Papers herewith Submitted.

The papers herewith submitted, on which this memorandum is based, are the following:

1. Affidavit of Dr. Eugen Meier, President of Uebersee Finanz-Korporation A. G., verified May 28, 1935.

2. Affidavit of Fritz von Opel, controlling stockholder, verified June 7, 1935.

3. Affidavit of Dr. Manfred Wronker-Flatow, former general counsel to Adam Opel A. G., verified June 6, 1935.

* Mr. von Opel came to New York at our request from Jamaica, British West Indies, where he was spending a vacation on May 13, 1935, for the purpose of giving us information about the background and recent history of the company.

4. Affidavit of Friedrich Wille, chief accountant of Ladenburg Thalmann & Co., verified June 6, 1935.

5. Affidavit of Theodore Hoffacker, investment banker, verified June 6, 1935.

As exhibits to these affidavits there are submitted various documents bearing on the corporate history of Uebersee and on the history of its assets, notably the deed of gift from Wilhelm von Opel to Fritz von Opel dated October 5, 1931, Exhibit R.

ESSENTIAL QUESTION INVOLVED.

The essential question involved in this application, as we understand it, is whether the owner of the gold is subject to the jurisdiction of the United States.

The Act of March 9, 1933, amending subdivision (b) of Section 5 of the Trading with the Enemy Act of October 6, 1917, 40 Stat. 411, empowers the President to

> "prohibit * * * hoarding of gold or silver coin or bullion or currency by *any person within the United States* or any place subject to the jurisdiction thereof * * *"

The same conception of jurisdiction *in personam* runs through the remainder of the Act of March 9, 1933, including the amendment to Section 11 of the Federal Reserve Act which empowers the Secretary of the Treasury to require

> "any or all individuals, partnerships, associations and corporations"

to pay and deliver any or all gold coin, etc., owned by such individuals, partnerships, associations and corporations.

In strict conformity with the jurisdictional limitations thus recognized, the executive order of the Secretary of the

Treasury dated December 28, 1933, referring to the amendment of the Federal Reserve Act by the Act of March 9, 1933, requires

> "every person *subject to the jurisdiction of the United States* forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion and gold certificates situated in the United States, owned by such person."

The jurisdictional restriction laid down in the Anti-Hoarding Act was pointed out on May 25, 1933, when the Attorney General, in rendering his opinion to the Secretary of the Treasury, said:

> "The Executive Order [of April 5, 1933] theretofore operates *in personam*, not *in rem*, upon the persons designated in the order rather than upon the gold required to be delivered by the order. * * * The order * * * is plainly applicable to all persons, corporations, partnerships, and associations *who are present* within the Continent of the United States * * *"

There is every reason to suppose that the legislation and the Executive Orders governing this application were drawn advisedly so as to exclude from their scope gold within the United States owned by persons not subject to the jurisdiction for the double purpose no doubt of respecting the restraints commonly accepted by civilized powers* and of avoiding the claims to compensation of

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* Holmes, J., in *Direction der Disconto-Gesellschaft v. U. S. Steel Corporation*, 267 U. S. 22, 28: "Taking the United States in this connection to mean the total powers of the Central and the State Governments, no doubt theoretically it could draw a line of fire around its boundaries and recognize nothing concerning the corporation or any interest in it that happened outside. But it prefers to consider itself civilized and to act accordingly."

non-resident alien owners whose national currency had not undergone devaluation.

POSITION OF THE TREASURY AND POSITION OF APPLICANT.

We assume that the Treasury, in originally denying the application, had come to the conclusion from its own investigations that the owner of the gold could not be held to be exempt from the jurisdiction of the United States, either because Uebersee Finanz-Korporation A. G. had subjected itself to the jurisdiction by performing acts or employing agents within the United States which constituted a technical doing of business here, or because Fritz von Opel as the controlling stockholder was to be deemed the real owner of the gold and had subjected himself to the jurisdiction by transient visits here after May 1, 1933.

From the most thorough investigation of the facts which we have been able to make since our retainer on May 6th, we feel that neither of these conclusions is true, and that a fair construction of the applicable legislation and Executive Orders would require that the gold be treated as exempt from the jurisdiction and the application be granted. In particular we wish to point out in the following discussion:

1. That Uebersee Finanz-Korporation A. G. is a real corporate entity, with a record of a small but substantial business as investment banker from its incorporation in Switzerland in 1922.

2. That the office and place of business of the corporation has always been in Zurich, Switzerland, and at no time has it had a resident agent or representative in the United States.

3. That it has never "done business" in the United States in the sense required by the authorities for a finding of its presence here.

4. That Fritz von Opel, after he became the controlling stockholder in or about January, 1932, has respected the corporate forms in the operation of the company's business.

5. That the present assets of the corporation in the United States, including the gold here involved, are the proceeds of a transaction in Opel Motors Works stock by virtue of which a separate estate *in rem*, designated a usufruct under German law, was reserved to the father and mother of Fritz von Opel, Wilhelm and Marta von Opel.

6. That this right of usufruct attaches to the shares of Uebersee Finanz-Korporation A. G. and to the gold here involved.

7. That Wilhelm and Marta von Opel have not subjected themselves to the jurisdiction of the United States.

8. That the reservation to them of the usufruct in the shares of the corporation and in the gold is under German law a reservation of the beneficial use and enjoyment such as to prevent Fritz von Opel from being the "owner" of either the shares or the gold within the meaning of the statute and the Executive Orders.

SUMMARY OF FACTS.

For the consideration of the legal principles involved it may be appropriate to summarize here the facts which are set forth more at large in the affidavits and the exhibits thereto.

Uebersee Finanz-Korporation A. G. was organized in 1922 as an investment company under the law of the Confederation of Switzerland, and was entered on June 3, 1922, on the Commercial Register of the Canton of Zurich, thereby becoming a juridical person in Swiss law. It had an authorized capital of 500,000 Swiss francs, divided into 100

bearer shares of 5,000 francs par value each, of which 250,000 Swiss francs were paid in upon organization. The charter (Maier Exhibit B) provided for a board of one to five directors to be elected by the stockholders. In practice one director managed the corporation.

So far as we know, and so far as is disclosed by the minutes of stockholders meetings, attached to Dr. Meier's affidavit as Exhibits C to P, the von Opel family had nothing to do with Uebersee during the first nine years of its existence; and the affidavit of Fritz von Opel shows that the von Opel connection with Uebersee began on April 27, 1931, when he negotiated with Adler & Co. A. G., Swiss banking corporation, a contract giving him an option to buy and Adler & Co. A. G. an option to sell all or substantially all the stock of Uebersee.

During this first period of its existence prior to the connection of the von Opels with it, Uebersee maintained (1923-28) on account in New York with the firm of Ladenburg Thalmann & Co. in New York, which seems to have been active and substantial, as set forth in the second affidavit of Friedrich Wille herewith submitted. Mr. Wille, having had charge of the books of account of Ladenburg Thalmann & Co. since 1920, was familiar with the account at the time.

At the time Fritz von Opel acquired an interest in Uebersee, namely April, 1931, he was in the employ of General Motors Export Corporation at Antwerp. He was a mechanical engineer, and had previously, during the period 1923-29, been employed in the family business, an important German automobile plant at Ruesselsheim-am-Main, Hesse, Germany, first known as Adam Opel Motor Works and incorporated in 1928 as Adam Opel A. G. Fritz von Opel became general manager of the corporation in 1928. The vital importance of Adam Opel A. G. to the present application is that the gold here involved is part of the proceeds of a transaction in the shares of that company, which transaction by a deed of gift executed on

October 5, 1931, made the shares and their proceeds into a von Opel family trust and which it was contemplated would be and was in fact over into Uebersee.

By a transaction negotiated in 1928 and consummated in 1929, General Motors Corporation acquired all the outstanding stock of Adam Opel A. G. amounting to 6,000 shares of 10,000 Reichsmarks par value each. By a separate transaction in the form of an escrow agreement dated April 11, 1929 (von Opel, Exhibit Q), Wilhelm von Opel (father of Fritz von Opel) and General Motors Corporation made the National City Bank of New York an escrow agent with respect to 600 shares of Adam Opel A. G. stock belonging to Wilhelm von Opel, and agreed that General Motors Corporation was to have an option thereon to sell, and Wilhelm von Opel an option to buy up to April 1, 1934, at a graduated price in Reichsmarks varying from 23,000 to 30,000 Reichsmarks a share according to the party exercising the option and the date of its exercise.

Some plan apparently being afoot to keep the von Opels interested in the management of their former Ruesselsheim plant under General Motors ownership, Fritz von Opel went to the United States at the end of 1929 and remained approximately a year in the employ of General Motors Corporation (Chevrolet Division) at various plants, where he obtained some practical acquaintance with American manufacturing methods. At the end of 1930 he returned to Europe and went into the employ of General Motors Export Corporation at Antwerp, where he remained until September or October, 1931. It was during this period (April 27, 1931) that he entered into the option-agreement with Adler & Co. A. G. for the acquisition of Uebersee Finanz-Korporation A. G. (von Opel, pp. 9-10). These negotiations were had with Dr. Frankenberg, an old acquaintance of Wilhelm von Opel, who was then living in Zurich and was general manager of Adler & Co. A. G. Fritz von Opel's idea in contracting in April, 1931, for the

acquisition of this stock was to use the company for the purpose of developing and marketing patents which he held (von Opel p. 9). He did not at that time have in mind transferring to Uebersee any Adam Opel A. G. shares or proceeds thereof, because he had as yet no knowledge even of the existence of the escrow agremnt, Exhibit Q (von Opel pp. 2-4), although he did know about the general transactions between General Motors Corporation and the von Opel family.

In the fall of 1931, after some discussion of the possible future of Fritz von Opel in the Opel Motor Works under General Motors Corporation ownership, his parents gave him by deed of gift dated October 5, 1931 (von Opel Exhibit R) the 10% of Adam Opel A. G. stock having a par value of 6,000,000 Reichsmarks covered by the escrow agreement Exhibit Q. It was then that Fritz von Opel learned the terms of the escrow agreement.

This deed of gift Exhibit R was drawn by Dr. Manfred Wronker-Flatow, then general counsel to Adam Opel A. G., now residing in New York City. Its execution is described by Dr. Wronker-Flatow in his affidavit (p. 2) as well as by Fritz von Opel (pp. 3-4). As the deed of gift is fundamental to an understanding of the present rights in the gold involved on this application, we set it out in full (Exhibit R):

"Russelsheim, Oct. 5, 1931.

"I, the undersigned Geheimer Kommerzienra Dr. ing. e.h. Wilhelm von Opel live with my wife Marta, née Bade, under community property agreement. Included in this property are shares of stock Nos. 1 to 600 of the Adam Opel Stock Co. in Russelsheim o/Main of the par value of R.M. 6,000,000 (six million). It is our common desire that these shares remain in posession of the male line of descent of our family, so that

the bearers of the name of Opel may remain in living connection with the work of our father Adam Opel.

Accordingly, I, with the consent of my wife, do hereby give out of our common property to our son Fritz von Opel the aforementioned shares of stock of the Adam Opel Stock Co. in Russelsheim on/Main Nos. 1 to 600 of the par value of R.M. 6,000,000 (six million). These shares are at present lodged with the bank.

I, the co-signor Fritz von Opel, do hereby accept this gift.

I, Wilhelm von Opel, hereby transfer ownership of these shares of stock to our son Fritz von Opel by relinquishment of our claim to the delivery of these shares.

The usufruct of these shares is not transferred to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereinafter referred to as the parents Opel until the death of the survivor of them. However, twenty per cent, of all dividends and interest accruing from these shares are to go to Fritz von Opel.

In the event that the parents Opel should die before Fritz von Opel, the latter must effect a settlement of the aforesaid gift with his sister, Mr. Elinor Sachs, née von Opel, or, in case she should predecease him, with her issue.

For the purpose of this settlement, the shares of stock are to be valued at the market price of the time of the settlement. Should the market value be higher than the present value, the higher value is to be used, if lower, then the lower value.

In case the parents Opel should not have drawn the income from these shares, under their usufruct rights, or not have drawn the entire amount of this income, then the settlement to be made by Fritz von Opel is to be increased by the amount of the income not drawn.

In the event that these shares should be sold or ex-

changed for other securities, then the proceeds of such sale or the securities received in exchange are to take the place of the said shares, subject to the rights and safeguarding of usufruct of the parents Opel.

In the event that Fritz von Opel should predecease his parents without leaving legitimate issue, then the gift effected by these presents shall become null and void. The aforesaid shares or their exchange value, plus the unused income accrued therefrom, shall then revert to the parents Opel or to the survivor of them.

(Signed) Dr. Wilhelm von Opel

(Signed) Fritz von Opel

I, the wife, Marta von Opel, née Bade, do hereby consent to the above agreement.

(Signed) Marta von Opel, née Bade"

By this instrument Wilhelm von Opel transferred to Fritz von Opel legal title to the 6,000,000 Reichsmarks par value Adam Opel A. G. stock, but did not transfer the usufruct in the stock; directed Fritz von Opel to effect a settlement with his sister on certain contingencies; and provided that the rights of the parents von Opel as usufructuaries should attach to the proceeds upon any sale or exchange of the stock. Under German law as explained by Dr. Wronker-Flatow, and under Swiss law, as explained by Dr. Meier, the right of usufruct constitutes a right *in rem*, and the retention of the usufruct by the grantors under the deed of gift effected a partition of ownership such that Fritz von Opel, although holder of legal title, was deprived of the beneficial enjoyment of the gift during the lifetime of his parents. The only income which during their lifetime he was to receive was a grant out of the

reserved usufruct of 20% of dividends and interest on the shares or their proceeds. The reservation of the usufruct was particularly insisted upon by Wilhelm von Opel, as a condition of the gift (Wronker-Flatow p. 2, von Opel p. 4).

Fritz von Opel agreed orally to transfer the shares so given him or their proceeds to a corporation whose stock would be held in such a manner as to safeguard the interests created by the deed of gift. The option contract with reference to the Uebersee stock had not yet been exercised either by him or by Adler & Co. A. G. In order to avert a loss on the Adam Opel A. G. shares through depreciation of the mark, Fritz von Opel went to New York in October, 1931, and endeavored to negotiate a change in the escrow agreement Exhibit Q so that the Reichsmarks payable thereunder might be paid on a gold or gold equivalent basis. This effort failed. Thereupon, using a power of attorney from his father, Fritz von Opel exercised the option provided by the escrow agreement by written notice to General Motors Corporation dated October 17, 1931 (Exhibit S-1), caused the shares of Adam Opel A. G. to be delivered to General Motors Corporation, and received in an account in his name with City Bank Farmers Trust Company in New York the purchase price of the shares, partly in cash and partly in General Motors Corporation common stock. The General Motors Corporation common stock to the number of 47,625 shares was credited on the purchase price at $24 per share making a total of $1,143,000; while the balance of $2,594,748.64 computed at the average cable rate of exchange between marks and dollars in New York was paid in cash from November 17th to November 24, 1931, to the credit (ultimately) of Fritz von Opel's account at City Bank Farmers Trust Company. Inasmuch as the escrow agreement called for 26,500 Reichsmarks a share at the time the option was exercised (Exhibit Q, Item 5), the total purchase price paid by General Motors Corporation

to Wilhelm and Fritz von Opel for the 600 shares of Adam Opel A. G. was R.M. 15,900,000. The dollar values aggregating $3,737,748.64 accepted in satisfaction of this mark obligation give a rate of exchange of $0.23508 to the mark (von Opel pp. 6-7).*

On October 28, 1931, Fritz von Opel received from City Bank Farmers Trust Company a form of authorization for corporate signatures, having then in mind the transfer of the entire amount of cash and securities realized under the escrow agreement to Uebersee Finanz-Korporation A. G. (von Opel p. 8). He left New York early in November, 1931, and reached Russelsheim before the first payment (November 17, 1931) from General Motors Corporation was due. He discussed with Wilhelm von Opel the decision that had been made in New York and argued for the desirability

> "of having the investment represented by such [escrow] agreement in more or less liquid form for conversion into stable forms of value which would protect the investment against the destructive effects of a monetary inflation."

At that time, of course, Fritz von Opel anticipated devaluation of the mark, not of the dollar. His father had been willing to retain the escrow agreement with modifications, including a lengthening of the term to five years, and to accept a gold conversion value for the Reichsmarks up to 50% only. Fritz von Opel convinced him, however, that the

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* This gave the von Opels a mark equivalent for their dollar investment of more than 4 marks to the dollar. The cable rate of exchange in New York for marks on June 6, 1935, was 40.63. This increased valuation of the marks, reflecting the devaluation of the dollar, allows the von Opels only 2.5 marks to the dollar on such of the American assets as are realized on a dollar for dollar basis.

immediate conversion of the escrow agreement into cash was preferable for the reason stated; and it was this underlying policy of endeavoring to protect themselves against the consequences of monetary inflation which, manifested as far back as October, 1931, influenced Fritz von Opel in February, 1933 (together with contemplated commitments for the investment program of Uebersee) to convert a large proportion of the American holdings of Uebersee into gold. It must be remembered that, had the von Opels waited until April 1, 1934, to exercise the option conferred by the escrow agreement Exhibit Q, they would not only have realized a higher price per share in Reichsmarks but have received payment in a currency which, nominally at least, has retained its old relationship to the dollar.

After the return of Fritz von Opel to Europe the option on Uebersee stock, which would have expired December 31, 1931, was exercised, and he became the owner of 97 out of the 100 shares, 3 shares being retained by or reserved for the three directors. On these shares only 250,000 Swiss francs had ben paid in. Through a credit with Alder & Co. A. G., Fritz von Opel arranged for the payment of the 50,000 Swiss francs theretofore paid in, as the purchase price, and a further 250,000 Swiss francs as the balance of the capital (von Opel pp. 11-12); but the only cash payment made by him in exchange for the Uebersee stock was 59,500 Swiss francs or $11,604, charged to his account with the Swiss Credit Anstalt, Zurich, on February 24, 1932, out of the proceeds of a remittance which Fritz von Opel made from his City Bank Farmers Trust Company account on December 1, 1931 (pp. 10-11). In other words, the entire cash consideration for the Uebersee stock was paid by Mr. von Opel out of the proceeds of the escrow agreement Exhibit Q, so that the shares of Uebersee thus acquired became as proceeds of

the Opel stock subject to the terms of the deed of gift Exhibit R.

Upon the purchase of this Uebersee stock, Fritz von Opel agreed with his father (pp. 12-13) that this company should become a vehicle for the holding and investment of the proceeds of the Opel stock, and at Wilhelm von Opel's request Dr. Frankenberg, managing director of Adler & Co. A. G., was made managing director of Uebersee Finanz-Korporation A. G. (von Opel p. 13; see Exhibit L, minutes of May 6, 1932). Fritz von Opel stated to Dr. Frankenberg his intention of going to New York for the purpose of turning over the securities held for his account there to Uebersee, and they discused an increase of capital stock of the company to be issued against this transfer.

On the occasion of business for which his father called him to New York in May, 1932, in connection with General Motors Corporation, Fritz von Opel transferred to the account of Uebersee Finanz-Korporation A. G. with City Bank Farmers Trust Company out of his own account securities having a total par value of $2,339,000 and cash amounting to $239,115.46 (von Opel p. 15). This transfer took place about June 1, 1932, as is evidenced by correspondence (von Opel Exhibits X and Y). The 47,625 shares of General Motors Corporation common stock were retained for the purposes of current trading, were converted into other securities, which were ultimately for-

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* In fact we understand that a further $100,000 out of the proceeds of the Opel stock subsequently transferred (June, 1932) to the account of Uebersee in New York was earmarked by Fritz von Opel for capital account and thus constituted the basis for the book entries in Zurich whereby the Swiss franc equivalent or Sw. Fr. 515,517 was passed to the discharge of von Opel's debt to Adler & Co. A. G.; but, as this was merely a matter of bookkeeping, it is not detailed in the affidavit of Fritz von Opel, and is here mentioned merely to emphasize that the entire consideration for the Uebersee stock was paid out of the proceeds of the Opel stock, as Mr. von Opel says (p. 12).

warded to Uebersee at Zurich, and do not figure upon this application.

The cash and securities so transferred to Uebersee Finanz-Korporation A. G. upon the books of City Farmers Trust Company constituted the entire or practically the entire proceeds of the Opel stock previously sold by Fritz von Opel to General Motors Corporation in accordance with the escrow agreement Exhibit Q. The cash received on that sale had in the interim been invested in securities. For the purpose of the transfer Mr. von Opel had first a power of attorney from Uebersee signed by Dr. Martin Bloch, then secretary of the company, on January 15, 1932 (von Opel p. 13, Exhibit U), and subsequently a power of attorney signed by Dr. Henggeler and Dr. Frankenberg as directors on May 9, 1932 (Exhibit W).

Fritz von Opel left New York for Europe on June 5, 1932. He retained his power of attorney on behalf of Uebersee, and kept in touch by cable with Theodore Hoffacker in New York with regard to investments to be made of the funds of the company, on which subject he also consulted with Dr. Frankenberg frequently (von Opel p. 16). Mr. Hoffacker he had met in October, 1931, and had entered into a written arrangement with him for trading in the 47,625 shares of General Motors Corporation stock (von Opel Exhibit V). Mr. Hoffacker had no relationship with Uebersee, however, except through Fritz von Opel, to whom he acted as investment counsel for von Opel's personal investments and for such as he made as attorney-in-fact for Uebersee (Hoffacker pp. 2-3).

Beginning in June or July, 1932, the funds of Uebersee were invested in two different fields. The first was brewing, represented by the company's purchase of the stock of Harvard Brewing Company.* The second field of invest-

* The affidavits do not go into this purchase or generally into the details of Uebersee's investments in the United States, but a memorandum thereon was submitted to the Treasury by Mr. Hoffacker in August, 1934.

ment was oil. This investment began with the acquisition of the stock of Spur Distributing Company, Inc., a Delaware corporation operating a gasoline distributing system (von Opel, p. 16). Engineering studies indicated that Spur would require support in the form of crude oil reserves and a refinery and Fritz von Opel as attorney in fact for Uebersee directed the sale of a substantial quantity of its bonds held in New York for the purpose of accumulating funds for additional oil purchases (von Opel pp. 16-17). Von Opel in his affidavit details the investments which he had under consideration during a visit to New York in November, 1932, and which contemplated expenditures of $1,000,000 in stock of a new company, of $1,500,000 (present cash outlay) for oil acreage, and of a possible 6,000,000 Reichsmarks for Adam Opel A. G. stock (von Opel pp. 17-19).

For these purposes Uebersee had accumulated cash by sales of its bonds in New York amounting to some $1,300,000 (von Opel p. 17). The banking holiday in Michigan in February, 1933, and the spread of moratoria thereafter, made Fritz von Opel frankly fearful that the funds of Uebersee in New York would be tied up indefinitely through a closing of banks. Fritz von Opel was told by Dr. Frankenberg to convert the cash holdings of the company into gold or foreign exchange. On February 26, 1933, he cabled City Bank Farmers Trust Company to purchase for account of Uebersee $1,250,000 in gold. This gold was purchased, and on March 3, 1933, transferred to Ladenburg Thalmann & Co., with which Uebersee had originally had its acount.

The gold being immobilized by the closing of the bank and the subsequent gold legislation, Uebersee acting through Fritz von Opel sold some $900,000 additional bonds in New York in March, 1933 (von Opel pp. 20-21), transferred part of this money to Switzerland on March 16, 1933, and in September, 1933, purchased dollars for the

purpose of the investments for which the gold had been accumulated.

This is the present position, the gold being still held by Ladenburg Thalmann & Co.

The 97 bearer shares of Uebersee Finanz-Korporation A. G. held by Fritz von Opel are on deposit with a bank in Zurich, Switzerland, under the control of Dr. Frankenberg as agent for Wilhelm von Opel, for the purpose of safeguarding the usufruct reserved in the deed of gift Exhibit R (von Opel pp. 22-23). These shares are also pledged with Adler & Co. A. G. for an obligation in which Wilhelm von Opel is interested (p. 23).

Fritz von Opel's parents and his sister, whose rights in the Uebersee stock and through such stock in such of the company's assets as are proceeds of the Opel stock, are all living, are citizens and residents of Germany, and have not been in the United States since June, 1932, at latest (von Opel p. 23).

Application for Export License.

Prior to the present application Ladenburg Thalmann & Co. on May 22, 1933, formally applied on behalf of Uebersee for a license to export the gold here involved. This application was denied by the Acting Secretary of the Treasury, Mr. Acheson, by letter dated July 6, 1933, pointing out that Uebersee had not brought itself within the terms of the Executive Order of April 20, 1933; that the Treasury assumed that the owners of the gold were not subject to the jurisdiction of the United States; and that upon this assumption

> "they are not required by said Executive Order to deliver the gold owned by them even though it may be situated within the United States."

POINT I.

UEBERSEE FINANZ-KORPORATION A. G. AS OWNER OF THE GOLD IS NOT PRESENT WITHIN THE JURISDICTION THROUGH AN AGENT OR THROUGH DOING BUSINESS OR OTHERWISE.

* * * * *

POINT II.

THIS IS NOT A CASE FOR DISREGARD OF THE CORPORATE ENTITY BY REASON OF DOMINANCE OF A SOLE STOCKHOLDER.

* * * * * *

POINT III.

INDEPENDENTLY OF ANY QUESTION AS TO THE CORPORATE ENTITY NO "OWNER" OF THE GOLD HERE INVOLVED IS SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

For the reasons stated, we feel confident that any court would hold that Uebersee Finanz-Korporation A. G. as owner of the gold here involved,* not only has not subjected

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* We have not separately discussed the question whether the corporation does own the gold. We do not believe there can be any question about the fact. It will be noted that the gold was purchased for Uebersee's account by City Bank Farmers Trust Company acting upon orders of Fritz von Opel as attorney-in-fact, cabled from Europe on February 26, 1933, and that it is now held for Uebersee's account by Ladenburg Thalmann & Co. The assets out of which the gold was purchased were made the property of Uebersee by the unilateral transfer effected on the books of City Bank Farmers Trust Company on Instructions of von Opel on June 1, 1932 (von Opel, pp. 14-15, Exhibits X and Y). The absence of any corporate obligation or evidence of indebtedness in exchange for the transfer is due to the fact that von Opel and Frankenberg contemplated a new stock issue (von Opel p. 13). (Action to this end has presumably been stayed by the difficulty about the gold; compare Exhibit P, minutes of April 11, 1933.) We are informed by Bayer and Clausen, accountants who have prepared Uebersee's income tax returns in this country for the years 1932 and following, that they based their return for 1932 upon figures supplied by City Bank Farmers Trust Company which were based upon Uebersee's ownership of the securities and cash transferred on June 1, 1932.

itself to the jurisdiction of the United States, but in its capacity as owner of the gold is entirely independent and distant from Fritz von Opel as stockholder. Fritz von Opel has been present in the United States at intervals since May 1, 1933, but the corporation has not.

Nevertheless the present application does not necessarily turn on the recognition of Uebersee's independent juridical existence, clear as we believe that to be. Ignoring the corporation for the moment and looking solely at the individuals interested in the gold, we find that Fritz von Opel is not an "owner" of the gold within the meaning of the Act of March 9, 1933, and the subsequent Executive Orders, because of the oustanding beneficial interest in Wilhelm and Marta von Opel who have not subjected themselves to the jurisdiction of the United States (von Opel, p. 23). The beneficial interest reserved to the parents von Opel constitutes what is known in German law as usufruct. As expressed in the deed of gift, Ex. K:

> "The usufruct of these shares is not transferred to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereinafter referred to as the parents Opel, until the death of the survivor of them. However, 20% of all dividends and interest accruing from these shares are to go to Fritz von Opel.
>
> . . . . . .
>
> "In the event that these shares should be sold or exchanged for other securities, then the proceeds of such sale or the securities received in exchange are to take the place of the said shares, subject to the rights of usufruct of the parents Opel."

While the estate of usufruct is not known to our law, it is firmly established in German and Swiss law which derive it from the Roman law. Usufruct is mentioned in

Gaius, Book II, Section 14. In the sixth century the codifiers of Justinian erected it into a separate title of the Institutes, Book II, Title IV:

> "Usufruct is the right of *using and taking the fruits* of property not one's own, without impairing the substance of that property; * * * Usufruct is thus a right *detached from the aggregate of rights involved in ownership*, and this separation can be effected in very many ways; for instance, if one man gives another a usufruct by legacy, the legatee has the usufruct, while the heir has merely the bare ownership [*nudam proprietatem*]; and, conversely, if a man gives a legacy of an estate, reserving the usufruct, the usufruct belongs to the heir, while only the bare ownership is vested in the legatee. Similarly, he can give to one man a legacy of the usufruct, to another one of the estate, subject to the other's usufruct."

Thus usufruct on the Continent of Europe has been from ancient times a right *in rem*, which, when separated from the naked title or "bare ownership", divested the title holder of the right of use and enjoyment. In Roman law the usufructuary could even transfer the usufruct by gift or sale, and the transferee took a right *in rem* which could be enforced by the praetor's edict.

In Swiss and in German law this conception seems to have been fully realized. Dr. Meier, a member of the Swiss Bar, says:

> "In Swiss law property charged with a usufruct is regarded as composed of two rights *in rem* (droits reels dingliches recht), the one consisting of the usufruct belonging to the usufructuary and the other consisting of the naked property in the thing belonging

to the proprietor. In Swiss law, a division of ownership in the thing is effected if the ownership of the usufruct is separate from the naked title. The right of usufruct is defined by the Swiss Civil Code §§745 and following."

Dr. Wronker-Flatow, a member of the German Bar and the draftsman of the deed of gift which created the usufruct describes fully the concept in German law (pp. 2-4), and quotes the relevant provisions of the German Civil Code. Section 1036 provides that the usufructuary is entitled to possession:

"§1036. The usufructuary is entitled to the possession of the thing. In exercising the right of usufruct he must maintain the existing economic function of the thing and adhere to the rules of orderly management [ordnungsmaessiger wirtschaft]."

Sections 1081-1083 define the respective rights and duties of the usufruct and the holder of legal title, and show that where a bearer security or instrument drawn to order is the subject of a usufruct, the usufructuary and the title holder have particular obligations of cooperation; the usufructuary is entitled to possession of the interest dividend or profit participation coupon and may even require the instrument to be deposited with the Reichsbank. Usufruct is defined as the right to draw the fruits of the object (§1030) *i. e.*, the right of beneficial use and enjoyment.

Dr. Wronker-Flatow also expresses the opinion, under the German law and the terms of the deed of gift Exhibit R, that if with the proceeds of the Opel stock Fritz von Opel purchased the Uebersee stock, the rights of usufruct would attach to that stock in the same manner as if it were described in the deed itself. On the assumption that with proceeds of the Opel stock there was directly purchased

the gold here involved, Dr. Wronker Flatow expresses the opinion that under German law the right of usufruct would attach to the gold in the same manner as if the gold had been described in the deed of gift.

Hence even if the corporate entity were in this case to be merged with the principal stockholder, and the gold to be regarded as held by the corporation (for whom it was purchased on February 27, 1933) for Mr. Fritz von Opel, the fact that it was purchased with funds which were proceeds of the Opel stock described in the deed of gift, would cause the reserved usufruct to attach directly to the gold. This means, of course, that the entire beneficial enjoyment of the gold would inhere in Wilhelm and Marta von Opel, non-resident aliens not subject to the jurisdiction, while (the Uebersee apart) only a naked legal title analogous to trust or custody would remain in Fritz von Opel.*

Under these circumstances, we would suggest that the gold here involved falls within the opinion rendered by the Attorney-General to the Secretary of the Treasury under date of May 25, 1933. Pointing out that the Executive Order of April 5, 1933, is applicable by its terms only to the "owners" of gold, the Attorney-General says:

> "Such language does not include a bare custodian, and accordingly those who within the continental United States hold gold in custody for non-resident alien owners are not required to comply with its terms by surrendering the gold thus held.
>
> For like reasons I am of the opinion that those who hold gold in trust for non-resident alien owners are not required to comply with the terms of the Order The word 'owner' is a comprehensive term and its pre-

* The 20% of dividends and interest granted Fritz von Opel out of the usufruct by the deed of gift is a grant out of the reserved estate, proceeds from the usufructuary, and does not give Fritz von Opel any part of the beneficial use and enjoyment.

cise meaning varies according to the context in which it is used and the subject matter involved. *Hyde* v. *Shine*, 199 U. S. 62, 82; *Glover* v. *United States*, 164 U. S. 294, 297; *Coombs* v. *People*, 198 Ill. 586, 588; *Guild* v. *Prentis*, 83 Vt. 212, 214, 215. No doubt the literal meaning of the word is broad enough to include a trustee or one who holds merely a bare legal title (see *Board of Hudson River Regulating District* v. *Fonda J. & G. R. Co.*, 249 N. Y. 445; *People* v. *Village of Lombard*, 319 Ill. 56), but ordinarily the word 'owner' is used to indicate a person in whom an interest is vested for his own benefit, or one who has dominion over and the right to enjoyment of the thing in question. As the Supreme Court said in *Hyde* v. *Shine*, 199 U. S. 62, 82, *supra*, the word 'implies something more that a bare legal title.' (See *United States* v. *Ninety-nine Diamonds*, 139 Fed. 961, 971 (C. C. A. 8th); *In re Fidham's Estate*, 96 Vt. 308, 317-318; *In re Smithfield City*, 70 Utah 564, 567-568; *Chicago* v. *Sullivan Machinery Co.*, 269 Ill. 58, 69-70; *Stone* v. *New England Box Co.*, 216 Mass. 8, 10-11, see also Restatement of the law of Trusts, tentative draft No. 1, section 2(d). In this sense of the word 'owners' the Executive Order would have no application to one who merely holds the bare title to gold in trust for another.

The use throughout the Order of the words 'own', 'ownership', 'owner', and 'belonging', seems clearly to negative an intention that the Order should be applicable to a mere holder, possessor, or custodian of gold, or to one who holds only the bare legal title to gold without any right of enjoyment thereof."

The authorities cited by the Attorney General for this conclusion fully support him. Thus the Supreme Court says in *Hyde* v. *Shine*, 199 U. S. 62, 82:

"Although the word owner has a variety of meanings and may, under certain circumstances, include an equitable as well as a legal ownership, or even a right of present use and possession, it implies something more than a bare legal title * * *."

Looked at in its substance, therefore, and without regard for the intervention in 1932 of Uebersee Finanz-Korporation A. G., the transaction which underlay the acquisition of the gold involved reserved the beneficial use and enjoyment of the assets out of which the gold was purchased to persons who have been continuously and still are exempt from the jurisdiction, and we submit that it would be in accordance with the letter as well as the spirit of the law and the intention of Congress to avoid interference with genuine foreign interests, for the Treasury to find that the owners of the gold are not affected by the Act of March 9, 1933, and the subsequent Executive Orders.

Conclusion.

We have assembled as carefully as possible in the available time the facts bearing upon the ownership of the gold covered by this application, and have discussed as fully as possible the question which we surmised have been in the mind of the Treasury with respect to that ownership. As a result of our investigation we are convinced that the present case genuinely falls outside the jurisdiction of the United States according to the enlightened manner in which that jurisdiction has been asserted by the Congress and the Executive.

If, however, matters remain which seem to the Treasury to deserve inquiry or demand explanation, we should be glad to co-operate in either respect or in both. The applicant rests this application only on the facts, and we feel that it is entitled under the law and the facts to have the application granted.

The fact, of course, cannot be ignored that, in view of the devaluation of the dollar, the result of the granting of the application may be represented as being, and may appear to the Treasury to be, a profit to the corporation as measured in dollars. A moment's thought will show how deceptive any such representation or such appearance would be. The books of the corporation are kept in Swiss francs, not in dollars. The investment now owned by the corporation was originally computed in Reichsmarks, not in dollars. Ever since the execution of the deed of gift on October 5, 1931, it has been the candid endeavor of the von Opels to reduce the cash the consideration called for by the escrow agreement, Exhibit Q, and translate that cash into stable values which would at least maintain the gold value of the Reichsmark at the termination of the escrow agreement on April 1, 1934.

Whether we look at the transaction from the standpoint of Uebersee's accountancy in Swiss francs, or from the standpoint of the original investment of Reichsmarks, or from the standpoint of April 1, 1934, and the gold value of the Reichsmark on that date, it is equally plain that the granting of the application does not represent a profit. That it would produce an increment of dollars is beside the point, for it shows only that the dollar has been depreciated. In the currency of origin (Germany) and in the currency of adoption (Switzerland) the granting of the application is absolutely necessary to avoid a loss.

We do not believe that anything in the history of the transaction, as frankly detailed in Fritz von Opel's affidavit suggests that any American public interest would be injured by the granting of the application to which the applicant is in law entitled.

The application should be granted, and Uebersee Finanz-Korporation A. G. authorized to deliver the gold coins to the Federal Reserve Bank of New York for exchange against gold bullion to an equivalent amount and to sur-

render the bullion to the Federal Reserve Bank for the account of the Banque Nationale Suisse.

Dated, New York, N. Y., June 8, 1935.

Respectfully submitted,

DAVIS, POLK, WARDWELL, GARDINER & REED,
Attorneys for Uebersee Finanz-Korporation A. G., Appearing Specially for the Purpose only of Application on Form TG-18.

SUPPLEMENTAL MEMORANDUM
IN THE
DEPARTMENT OF THE TREASURY,
OF THE UNITED STATES OF AMERICA.

In the Matter

of

The Application of UEBERSEE FINANZ KORPORATION AKTIEN GESELLSCHAFT, regarding Gold held for its Account in the United States.

STATEMENT.

At our informal conference at the Treasury on June 8th, when there were submitted the five affidavits discussed in our memorandum of that date, the suggestion was made that the Treasury would be interested in the relationship of Theodore Hoffacker to Uebersee (if any) and to Fritz

von Opel, and likewise the extent of Uebersee's interest in and the nature of its connection with domestic corporations doing business in the United States.

As these questions were not fully covered in our original papers, we have taken the liberty of obtaining, and submit herewith, the further affidavits of Theodore Hoffacker, verified June 12, 1935, and of Fritz von Opel verified on the same date, together with a letter from the Secretary of Harvard Brewing Co. (Delaware) dated June 11th with attached statement of facts of record regarding the corporation.

1. *Summary of Additional Facts Shown.*

Without reviewing in any detail the additional facts set forth in these papers, for which we would rather refer to the affidavits themselves, we may summarize them for the purpose of discussion as follows:

(a) The only contractual relationship which Mr. Hoffacker has ever had was with Fritz von Opel. It was partly written and partly oral. In so far as written, it is contained in the letter agreement dated October 30, 1931, of which a copy was attached to von Opel's affidavit first submitted as Exhibit V. *This agreement, it will be noted, related only to trading in 47,625 shares of General Motors Corporation common stock which never belonged to Uebersee.*

In so far as oral, the agreement between Mr. Hoffacker and Mr. von Opel is set forth fully at pages 2-3, and was to the effect that Mr. Hoffacker would have 20% of any profit ultimately realized by Mr. von Opel upon the sale of securities purchased on his advice. Mr. Hoffacker dealt with Mr. von Opel personally, and this agreement does not apply to any securities purchased by Uebersee.

Mr. Hoffacker as investment counsel did not deal with Uebersee directly or indirectly. He learned that Mr. von Opel had a power of attorney for Uebersee in 1932, but he

learned this fact quite collaterally. He dealt with Mr. von Opel as a principal and never as the representative of any company.

The compensation which Mr. Hoffacker has received for services rendered by him as investment counsel to Mr. von Opel has been limited to his 20% of the profit on the trading in the 47,625 shares of General Motors Corporation stock, which was substantial.* The absence of any compensation to Mr. Hoffacker in respect of investments on which he advised Mr. von Opel and which Uebersee (rather than Mr. von Opel) made, is counterbalanced for Mr. Hoffacker by the emoluments he received as officer of the companies in which Uebersee has so invested. These emoluments are stated by him at page 5 of his affidavit, and amount according to our computation to something like $29,200 annually.

(b) Uebersee holds some interest in four American corporations. These are Spur Distributing Co., Inc., a Delaware corporation; Harvard Brewing Co. (Delaware), a Delaware corporation; Oil Production, Inc., a Louisiana corporation, and Oil Refineries, Inc., a Louisiana corporation.

(c) In Spur, Uebersee owns 75,589 out of 140,000 shares of stock outstanding. In Harvard Brewing Co. (Delaware), it owns about 300,000 shares out of 525,605 outstanding. Harvard Brewing Co. (Delaware) owns all the capital stock of Harvard Brewing Co. (Massachusetts) which operates a brewery at Lowell, Massachusetts. Uebersee owns all the outstanding stock of Oil Refineries, Inc., together with a $200,000 mortgage note on its property. It owns none of the oustanding stock of Oil Production, Inc.,

* We are informed that Mr. Hoffacker's participation in this profit amounted to more than $80,000.

but does own the outstanding bonds of that company in the amount of $541,000.

(d) Mr. Hoffacker is Vice-President of Spur Distributing Co., Inc., and a director thereof. He is a director and Vice-President of Harvard Brewing Co. (Delaware) and President of Harvard Brewing Co. (Massachusetts). He is President of both Oil Production, Inc., and Oil Refineries, Inc., and a director of each. Mr. Fritz von Opel's only connection with any of these companies is as a director of Harvard Brewing Co. (Massachusetts), to which post he was elected on December 13, 1933.

(e) No officer or director or stockholder of Uebersee (other than Mr. von Opel as aforesaid) has any connection with these four American companies. The affairs of Spur are conducted under a management contract by J. M. Houghland, the President. Oil Production, Inc., and Oil Refineries, Inc., are managed by Crattendon Engineering Company under management contracts. Mr. Hoffacker's affidavit, quoting telegrams from the officers of the respective companies, is emphatic to the effect that neither Uebersee as a corporation, nor Fritz von Opel personally has sought to dominate or has influenced the conduct of corporate affairs.

(f) Each of these four American corporations has its independent place of business, its regular directors' and stockholders' meetings, its corporate records kept under the custody of appropriate officers, and in all respects preserves its independence as a corporation.

* * * * * *

NOTICE OF MOTION TO DISMISS.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

E. 80-319.

UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT,

Plaintiff,

—against—

WALTER T. ROSEN, HARRY B. LAKE, PAUL M. ROSENTHAL, HENRY MARCH; and EDWARD E. THALMANN and ALEXANDER B. SIEGEL, as Trustees of the Estate of Ernest Thalmann, Deceased; and VIRGINIA M. ROSENTHAL, PAUL M. ROSENTHAL, JOHN ROSENTHAL, SIDNEY BACHRACH, and FREDERICK M. HEIMERDINGER, as Executors of the Estate of Moritz Rosenthal, Deceased; Co-partners doing business as LADENBURG, THALMANN & Co., and FEDERAL RESERVE BANK OF NEW YORK,

Defendants.

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit of EDWIN C. FRENCH, duly verified the 17th day of June, 1935, the undersigned will move this Court at a stated term for motions to be held on June 18, 1935, at 10:30 o'clock in the forenoon of that date, or as soon thereafter as counsel can be heard, for an order dismissing the bill of complaint herein, upon the ground that said complaint fails to state facts sufficient to constitute a cause of action as against Federal Reserve Bank of New York, and for such other

further and different relief to which defendant may be entitled.

Dated: New York, N. Y., June 17, 1935.

Yours, etc.,

WALTER S. LOGAN, Esq.,
Solicitor for Defendant,
Federal Reserve Bank of New York,
Office & P. O. Address,
No. 33 Liberty Street,
Borough of Manhattan,
New York, New York.

To:

ISIDOR J. KRESEL,
Solicitor for Plaintiff,
15 Broad Street,
New York, New York.

ORDER DENYING MOTION, DATED JULY 15, 1935.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

E. 80-319.

UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT,

Plaintiff,

—against—

WALTER T. ROSEN, HARRY B. LAKE, PAUL M. ROSENTHAL, HENRY MARCH; and EDWARD E. THALMANN and ALEXANDER B. SIEGEL, as Trustees of the Estate of Ernest Thalmann, Deceased; and VIRGINIA M. ROSENTHAL, PAUL M. ROSENTHAL, JOHN ROSENTHAL, SIDNEY BACHARACH, and FREDERICK M. HEIMERDINGER, as Executors of the Estate of Moritz Rosenthal, Deceased; Co-partners doing business as LADENBURG, THALMANN & Co., and FEDERAL RESERVE BANK OF NEW YORK,

Defendants.

A motion on behalf of plaintiff for an injunction *pendente lite* restraining the individual defendants above named, co-partners doing business as Ladenburg, Thalmann & Co., their agents, officers and employees, during the pendency of this action, and until the further order of this Court, from transferring, delivering, paying over or otherwise disposing of plaintiff's bags of United States gold coins mentioned in the bill of complaint herein, to any person, firm, body or corporation other than the plaintiff, and for other and further relief, having come on to be heard on the 18th day of June, 1935, pursuant to an order to show cause made herein on the 15th day of June,

1935, and upon reading and filing said order to show cause made herein on June 15, 1935, the affidavit of Isidor J. Kresel, sworn to the 15th day of June, 1935, and the bill of complaint herein, verified the 15th day of June, 1935, and the affidavit of Isidor J. Kresel, sworn to the 20th day of June, 1935, together with the documents therein referred to and identified, and the affidavit of Isidor J. Kresel, sworn to June 24, 1935, in support of said motion, and the affidavits of Friedrich Wille, sworn to the 18th day of June, 1935, and the 21st day of June, 1935, respectively, in opposition thereto, and after hearing Isidor J. Kresel, Esq., solicitor for the plaintiff (Isidor J. Kresel, Esq., and Bernard Hershkopf, Esq., of counsel), for said motion, and Messrs. Van Vorst, Siegel & Smith, solicitors for the individual defendants, co-partners doing business as Ladenburg, Thalmann & Co. (Arthur B. Brenner, Esq., of counsel), in opposition thereto, and due deliberation having been had,

Now, on motion of Van Vorst, Siegel & Smith, solicitors for the individual defendants, co-partners doing business as Ladenburg, Thalmann & Co., it is hereby

Ordered that plaintiff's said motion for an injunction *pendente lite* be and the same hereby is in all respects denied;

Further Ordered that the stay contained in the order to show cause made herein on the 15th day of June, 1935, restraining and staying the individual defendants, co-partners doing business as Ladenburg, Thalmann & Co., from transferring, delivering or paying over said bags of United States gold coins to the Federal Reserve Bank of New York or to any one other than the plaintiff, be and the same hereby is continued for the period of ten (10) days after service upon the plaintiff's solicitor of a copy of this order, with notice of entry thereof;

FURTHER ORDERED that if during said period of ten (10) days the plaintiff shall take an appeal from this order to the Circuit Court of Appeals and shall give bond with good and sufficient sureties in the sum of $5,000.00, conditioned on the payment to said individual defendants, co-partners doing business at Ladenburg, Thalmann & Co., of their costs and damages arising from this application for a preliminary injunction and all proceedings consequent thereto in the event that plaintiff's said appeal should be dismissed or that this order, denying plaintiff's motion for an injunction *pendente lite*, should be affirmed or that said stay hereby continued should be reversed or vacated, said stay shall continue until the entry and service of the order of the Circuit Court of Appeals upon said apeal, otherwise said stay shall cease at the end of said period of ten (10) days;

FURTHER ORDERED that anything herein to the contrary notwithstanding, said individual defendants, co-partners doing business as Ladenburg, Thalmann & Co., have, and are hereby granted, leave to apply either to the Circuit Court of Appeals or to a Circuit Judge for a modification or vacation of said stay, or for further security or for any other appropriate relief in respect of said stay.

Dated, New York, N. Y., July 15, 1935.

FRANCIS G. CAFFEY,
U. S. D. J.

ORDER OF CAFFEY, D. J., DATED JULY 15, 1935.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT,

Plaintiff,

—against—

WALTER T. ROSEN, HARRY B. LAKE, PAUL M. ROSENTHAL, HENRY MARCH; and EDWARD E. THALMANN and ALEXANDER B. SIEGEL, as Trustees of the Estate of Ernest Thalmann, Deceased; and VIRGINIA M. ROSENTHAL, PAUL M. ROSENTHAL, JOHN ROSENTHAL, SIDNEY BACHARACH, and FREDERICK M. HEIMERDINGER, as Executors of the Estate of Moritz Rosenthal, Deceased; Co-partners doing business as LADENBURG, THALMANN & CO., and FEDERAL RESERVE BANK OF NEW YORK,

Defendants.

A motion on behalf of plaintiff for an injunction *pendente lite* enjoining and restraining defendant, Federal Reserve Bank of New York, its agents, officers, servants and employees, and each of them, during the pendency of this action and until the further order of this Court, from transferring, delivering, paying over, or otherwise disposing of, the plaintiff's bags of United States gold coins mentioned in the bill of complaint herein, to any person, firm, body, or corporation other than the plaintiff, and for other and further relief, having come on to be heard on the 18th day of June, 1935, pursuant to an order to show cause made herein on the 15th day of June, 1935, and upon reading and filing said order to show cause made herein on June 15, 1935, the affidavit of Isidor J.

Kresel, sworn to the 15th day of June, 1935, and the bill of complaint herein, verified the 15th day of June, 1935, and the affidavit of Isidor J. Kresel, sworn to the 20th day of June, 1935, together with the documents therein referred to and identified, and the affidavit of Isidor J. Kresel, sworn to June 24, 1935, in support of said motion, and upon reading and filing the notice of motion made herein by Walter S. Logan, Esq., solicitor for defendant Federal Reserve Bank of New York, for an order dismissing the bill of complaint herein, and the affidavit of Edwin C. French, duly verified the 17th day of June, 1935, in support of said motion for an order to dismiss bill of complaint herein, and proof of due service of said notice of motion upon plaintiff and upon the individual defendants above named, co-partners doing business as Ladenburg, Thalmann & Co., by the written admissions of their respective attorneys; and, after hearing Isidor J. Kresel, Esq., solicitor for the plaintiff (Isidor J. Kresel, Esq., and Bernard Hershkopf, Esq., of counsel), in support of said motion for an injunction *pendente lite*, and Walter S. Logan, Esq., solicitor for defendant Federal Reserve Bank of New York (Felix T. Davis, Esq., of counsel), in opposition thereto and in support of said motion for an order dismissing the bill of complaint herein, and due deliberation having been had,

NOW, on motion of WALTER S. LOGAN, solicitor for defendant, Federal Reserve Bank of New York, it is hereby

ORDERED:

1. That the bill of complaint herein be, and the same hereby is, dismissed with respect to defendant, Federal Reserve Bank of New York;

2. That the title of this suit be, and the same hereby is, amended to exclude the name of said Federal Reserve Bank of New York as a party defendant herein.

Dated, New York, New York, July 15th, 1935.

FRANCIS G. CAFFEY,
United States District Judge.

From the papers before me it appears to be undisputed that the plaintiff purchased the gold here involved in February, 1933; that the individual defendants held, and since March 2, 1933, have held, this gold as warehousemen for the plaintiff; that the Secretary of the Treasury has refused to issue a license, which the plaintiff sought, for exportation of the gold or for its delivery to the defendant bank to be held in custody for a Swiss bank, designated by the plaintiff; and that the Secretary has directed the individual defendants to turn over the gold to the defendant bank to be held for account of the Treasurer of the United States.

For the sake of argument it will be assumed, though it is not decided, that the plaintiff is, and during the whole period has been, a non-resident alien who is not subject to or within the terms of the Emergency Banking Act approved March 9, 1933 (48 *Stat.* 1), or any of the executive orders or regulations thereunder.

Upon the recited facts, some actual and others assumed, the sole questions arising, or raised by the plaintiff, are (1) whether the Gold Reserve Act of 1934, approved January 30, 1934 (48 *Stat.* 337), applies to the gold and (2), if so, whether, in an aspect mentioned below, the statute is constitutional.

In contradistinction to the 1933 Act, which was confined to persons, the later statute operates *in rem*. In the first sentence of Section 3 of the Gold Reserve Act it is provided that the Secretary of the Treasury, with the approval of the President, shall by regulations prescribe the conditions under which "gold" may be held or exported and in the second sentence, that "gold in any form" may be exported or held in custody (except for the Govern-

ment) "only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations." Section 4 provides that "any gold" withheld, exported or "held in custody, in violation of this Act or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States."

It strikes me that the language of the two sections is so clear that there is no escape from construing it to cover the gold in suit. The first sentence of Section 3 deals with "gold". The word is not qualified. It must, therefore, mean all gold. The second sentence deals with "gold in any form" and Section 4, with "any gold." So also both sections unambiguously and explicitly deal with holding such gold in custody. I cannot conceive phraseology which would more plainly embrace the gold with which we are now concerned. That this is true is further confirmed by the last sentence of Section 3. As I read that sentence, it indicates beyond peradventure Congressional intent to include within the previous sentences of the section all gold whatsoever situate within continental United States.

The plaintiff urges that every statute is presumed to be prospective and that the 1934 Act would be given retrospective effect if it were construed to cover gold acquired previous to the passage of that statute. I dissent from this view. I cannot accept it partly because, whatever the presumption, the language employed is both comprehensive and peremptory and partly because a discrimination between parcels of gold so as to subdivide it into classes, separated as of the date of passage of the Act, would create a loophole which would defeat the manifest purpose (save as expressly exempted or provided to be exempted) to carry into the Treasury all gold whatsoever physically within or coming into the United States. No interpretation should be adopted which would frustrate this obvious design of Congress. The use of the expression "held in custody" would have been inapposite if the object had been to relieve from the influence of the statute gold acquired previous to its enactment.

In the light of *Norman* v. *B. & O. R. Co.*, 294 U. S. 240, and *Nortz* v. *United States*, 294 U. S. 317, the authority to Congress to provide, as it has provided in the sections of the Gold Reserve Act of 1934 already referred to, for complete commandeering of the entire stock of gold within the territorial limits of the United States seems to me settled. As I see the problem, it is so definitely settled that it would be supererogation for me to discuss it.

The two cases last cited are but the most recent in a long series of decisions by the Supreme Court which have established the plenary nature of the power of Congress with respect to gold when legislating about the money system. It extends to all gold in the country, regardless of who is the owner; regardless of whether the owner be alien or citizen, resident or non-resident; regardless of when ownership has begun or shall begin.

The claim by the plaintiff with respect to the validity of the statute, as I understand it, is reduced to the single insistence that the portion of Section 3 which undertakes to empower the Secretary of the Treasury to make regulations is an attempt to delegate legislative power, within the prohibition declared in such decisions as *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, and *Schechter Poultry Corporation* v. *United States*, 55 Sup. Ct. Rep. 837.

The regulations which the Secretary is directed to issue are required to "prescribe the conditions under which gold may be acquired and held, * * * or * * * exported, * * *: (a) for industrial, professional, or artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act." As I further understand, the plaintiff concedes that clauses (a) and (b) just quoted do not infringe the Constitution; the sole contention being that the vice asserted is exclusively in and exclusively inheres to clause (c).

If, however, regulations resting only on clause (c) be invalid, as I see it, the consequence would be merely that the Secretary would be deprived of opportunity, in his discretion, to make a regulation under which the plaintiff could lawfully be permitted to have gold held in custody for its account or could lawfully export it. I think that it is only upon the hypothesis that clause (c) does confer on the Secretary valid power to make a regulation which would grant the plaintiff leave, or under which, on request, leave might be granted to the plaintiff, to have the gold held in custody for it or to export it that violation of the second sentence of Section 3 or forfeiture under Section 4 could be avoided if the individual defendants should continue to hold the gold for the plaintiff's account or if the plaintiff should proceed with its exportation. There is no occasion, therefore, to pass on the validity of clause (c). If it were treated as void, that would merely spell defeat for the plaintiff; that would merely rob the Secretary of authority,—in conditions outside of clause (a) or (b),—to adopt a regulation legalizing custodial holding of gold for the account of any private owner.

Again, Section 16 creates an affirmative presumption that if any separable provision of the statute be held invalid, the remaining provisions of the Act shall not be affected (*Compare Hill* v. *Wallace*, 259 U. S. 44; *Utah Power & L. Co.* v. *Pfost*, 286 U. S. 165; *Champlin Rfg. Co.* v. *Commission*, 286 U. S. 210). On their face, clauses (a) and (b) of Section 3 are wholly separable from clause (c). The three clauses are in no sense dependent on each other. It would be entirely rational and practical for the Secretary to determine that no regulation whatever was or is needed under clause (c). I do not think, therefore, there is any warrant whatever for a court attributing to Congress the purpose, if clause (c) should fail, that either clause (a) or clause (b) or any other provision of the statute should thereupon cease to have effect. To hold otherwise would nullify the specific announcement in Sec-

tion 16 that "If any provision of this Act, * * * is held invalid, the remainder of the Act, * * * shall not be affected thereby."

Upon the grounds stated I feel that, if we ignore the Emergency Banking Act, as well as executive orders and regulations thereunder, the Gold Reserve Act itself stands squarely in the way of an award to the plaintiff of the relief it seeks.

The individual defendants ask the court to take possession of the gold pending further proceedings. The court is not equipped to care for such property. Indeed, I know of no provision of law under which, in the circumstances, the Clerk can be compelled to take it in hand or the court by other means to receive it. While I recognize the embarrassment of the individual defendants, because of the conflicting demands on them, I have been unable to contrive a fair method for their relief at this stage.

The defendant bank moves that the bill be dismissed as against it. If I be right in what has been said above, then such dismissal must follow.

Numerous other points were brought forward at the oral argument and have been repeated in the briefs. In view, however, of the conclusion I have reached, I do not think it worth while, or even appropriate, to go into these additional matters.

Accordingly, the motion for an injunction *pendente lite* will be denied and the bank's motion to dismiss the bill will be granted.

It is clear that if I be in error, serious and perhaps irremediable injury may be suffered by the plaintiff. Under Section 129 of the Judicial Code (28 U. S. C. A., sec. 227) an appeal by the plaintiff to the Circuit Court of Appeals will lie from the refusal of an injunction. I should be willing that the stay contained in the order to show cause of June 15, 1935, continue for ten days after service on the plaintiff's solicitor of the order hereon; also that if during that ten days' period the plaintiff take an appeal

to the Circuit Court of Appeals and give bond in an amount to be prescribed in the order, the stay continue until after disposition of the appeal, provided that, in the meanwhile, the individual defendants have leave to apply either to the Circuit Court of Appeals or to a Circuit Judge for a modification or vacation of such stay. Counsel may be heard by memoranda on settlement of the order as to the amount of the bond.

Settle order on three days' notice.

Dated, July 9, 1935.

FRANCIS G. CAFFEY,
United States District Judge.

* * * * *

Defendant's Exhibit 9

The National City Bank
of New York
established 1812 New York, September 22, 1933

Mr. Fritz von Opel
New York City.

Dear Sir,

We quote the following extract from the cable received from the Deutsche Bank & Diskonto Gesellschaft, Frankfurt on October 24, 1931:

"Geheimrat Dr. Wilhelm von Opel Ruesselsheim instructed us to cable to you the following new power of attorney—Until you hear from me to the contrary you are hereby authorized and requested to act upon any and all instructions which may be given you from time to time by my son Fritz von Opel regarding any and all funds or other property at any time with you for my account and

to honor each and every withdrawal he may request therefrom—signed Dr. Wilhelm von Opel"

Very truly yours

(signature) E. F. REGAN
Assistant Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this the 22nd day of September in the year one thousand nine hundred and thirty three before me personally came E. F. Regan to me known to be the individual who executed the foregoing and acknowledged that he executed the same.

(signature) Notary Public

Stamp:

Notary Public Richmond Co.,
Certificate filed in N. Y. Co.
Clerk's No. 242, Register's No. 4-H 126
Commission Expires March 30, 1934

Defendant's Exhibit 10

Der Praesident des Landesfinanzamts Kassel
als
Stelle fuer Devisenbewirtschaftung

Frankfurt/Main, March 21, 1932

Zweigstelle Frankfurt (Main)

No. 15595

Your aplications of December 22, 1931, and February 5, 1932, for the release of your deposits of sfrs. 3,500,000.00 with the firm of Adler & Co., Zuerich, are hereby denied, in view of the financial and economic situation.

By order

(sgd.) MIELKE

stamp:

(Foreign Exchange)
(Control Office)
(Kassel -)
(Branch office)
(Frankfurt a/M.)

Herrn
Geheimer Kommerzienrat
Dr. Wilhelm von Opel,
Ruesselsheim

Defendant's Exhibit 11

BERLIN SW 11, November 30, 1931

Anmeldestelle
fuer Auslandsschulden
(Office for the Registration
of Foreign Debts)

Herrn
Geh. Kommerzienrat
Dr. Wilhelm von Opel

Diary No. 10206

Since it is necessary for the impending standstill negotiations to ascertain the present status of foreign debts,

we are sending you enclosed a form supplementing the report you sent us pursuant to the Directive for the execution of the Order of the Reichspraesident concerning the Registration of Foreign Liabilities, dated July 27, 1931. (Reich Law Gazette I, Page 403).

We request you to state thereon with the greatest accuracy your foreign liabilities as of November 30, 1931.

Instructions for filling in the form are attached.

Please return the report not later than December 5, 1931, using the enclosed franked envelope.

In case there should be no more foreign liabilities on November 30, a negative report has to be submitted in any case, which will bear your signature.

Anmeldestelle fuer Auslandsschulden
(sgd.) signature illegible

Defendant's Exhibit 12

December 11, 1931

An die
Anmeldestelle fuer Auslandsschulden
(Office for the Registration of Foreign Debts)
Berlin SW 111

Enclosed I am sending you the executed and signed form which you sent me. On account of a trip I was unable to send it in any earlier.

Very sincerely yours,

Enclosure

An die
Anmeldestelle fuer Auslandsschulden
(Office for the Registration of Foreign Debts)
Berlin SW 111

Diary No. 10206

Supplement

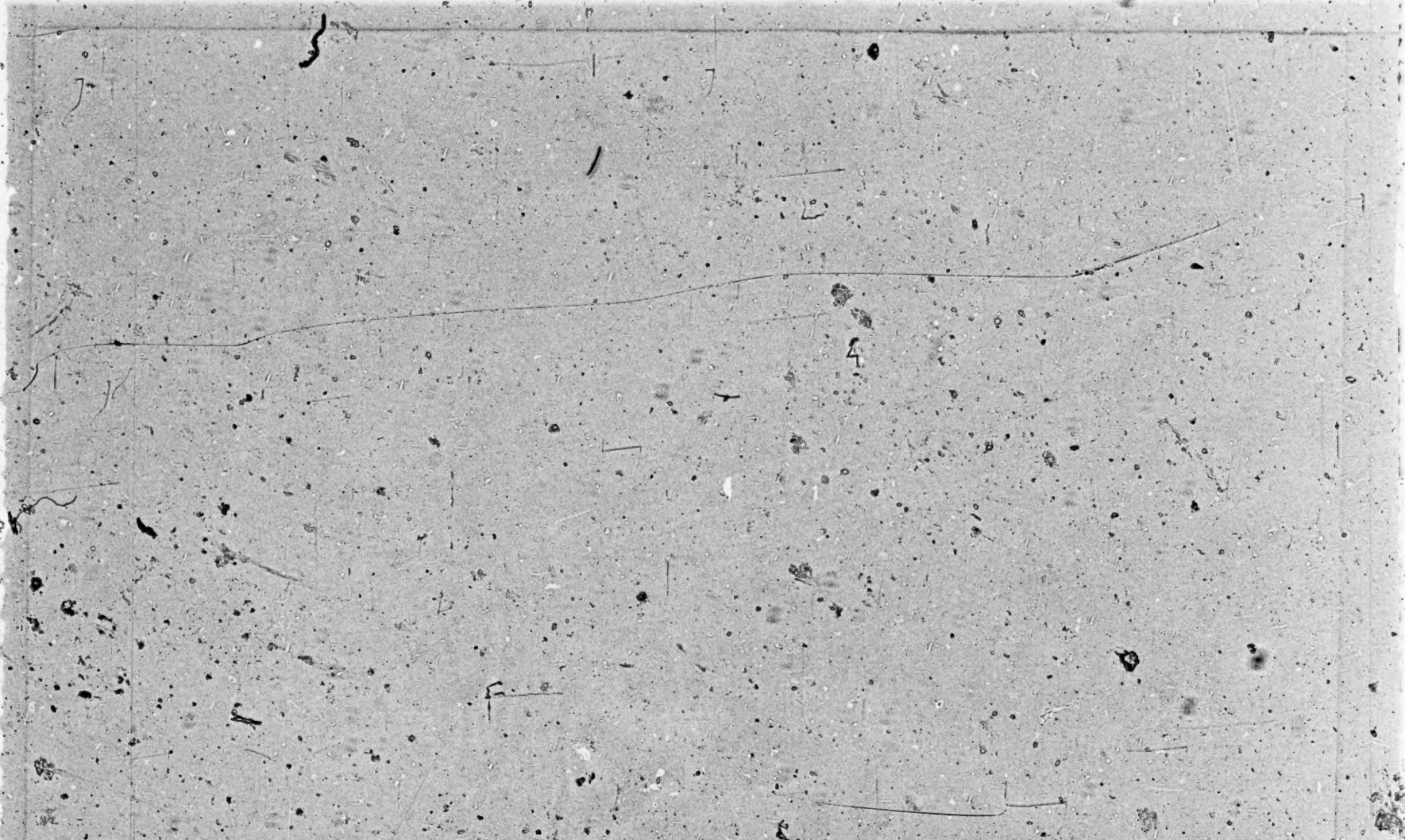
Supplementing my report handed to you in compliance with the Directive for the Execution of the Order of the Reichspraesident regarding Registration of Foreign Liabilities, dated July 27, 1931, I am enumerating below all my foreign debts as of November 30, 1931.

On November 30, 1931, I had foreign liabilities in RM and foreign exchange as listed below.

In filling in the form, I have strictly adhered to the instructions of the leaflet.

Ruesselsheim, December 11, 1931

sgd. Dr. Wilhelm von Opel
Wiesbaden,
Steubenstrasse 34



[Translated from a photostatic copy of the German original.
Handwritten notations appear in brackets.]

Diary No. 10206 Group 17

Liabilities from contingent obligations (guaranties etc.):-

opposite other creditors

Monetary Unit	Amount in foreign exchange	Reichsmark equivalent (omitting Pfennige)	Maturity Month, Year	Name and location of the creditor	Country	Trade branch
sfrs.	3,816,500.00	3,114,264.31	December 31, 1931	Fritz v. Opel respectively Overseas Finance Corporation, Zurich,	Switzerland	Patent office

[December 11, 1931]

2109

Defendant's Exhibit 13

January 5, 1932

An den
Herrn Praesidenten des Landesfinanzamts Kassel
als Stelle fuer Devisenbewirtschaftung,
Zweigstelle Frankfurt a.M.,

Frankfurt a.M.

Answering your letter of the 29th of last month I am enclosing herewith

1. copy of the agreement with the firm of Adler & Co. Zuerich. A certified copy of the agreement is already in your hands. My representative will personally show you the original.

2. Copy of a telegram showing that the option was exercised. This original, too, will be shown by my representative.

These documents who that my son Fritz von Opel is obliged to take over the sfrs. 300,000.00 shares of the Overseas Finance Corporation Ltd. at the rate of 105 1/2% and to make available through me a loan of sfrs. 3,500,000.00.

With the letter of October 28, 1931, copy of which is enclosed, I myself had asked the firm of Adler & Co. to release me from my obligation to place the loan at the disposal of my son. However, according to the letter of November 30, 1931, copy of which is also enclosed, the firm of Adler & Co. insists upon its right, so that I too am compelled to keep available for the loan the expected amount of sfrs. 3,500,000.00, and the price of the shares. The originals of these two letters will also be shown to you by my representative.

Since the other contracting party will under any circumstances compel my son to fulfill his obligations under the contract, my son has also taken measures for the purpose of safeguarding his claim with a view to cover himself, as the enclosed copy of a letter will show.

Incidentally, I myself believe that the projected enterprise of my son will succeed and may be of great importance to German economy. I am again enclosing a list of the patents owned by my son, which since many of them are foreign patents, are to be exploited by this company.

Furthermore, I am enclosing for your inspection abstracts of my current account which show that I kept the money ready for my son as early as March 1930, in the beginning of the negotiations, for reasons which my representative will explain to you personally.

I am asking again to approve my application of December 22, 1931.

Yours very truly,

Defendant's Exhibit 14

January 13, 1932

To the
President of the Regional Revenue Office Kassel
in its capacity as Foreign Exchange Control Office
Frankfurt on Main Branch
attention Reichsbankdirektor Goller,

Frankfurt a.M.

Dear Sir,

I am referring to the conference you had some days ago with Dr. Faust and beg to hand you enclosed the records you requested:

1.) the acknowledgment by my son of the letter of Messrs. Adler & Co. Zuerich, dated April 15, 1931.

2.) the letter of Messrs. Adler & Co., by which this firm exercises its right of option.

To 1 and 2: Since my son is away at present on a trip he could not send the original letters and procured copies for this purpose, but with an accompanying letter by Messrs. Adler & Co., which I am enclosing in the original.

3.) the affidavit you desired.

I beg to inform you also, that I remitted the free amount of about sfrs. 354,834.90 to the account of the directorate of the Reichsbank (Reichsbankdirektorium) Berlin, with the Schweizerische Kreditanstalt in Zuerich. I have informed the directorate of the Reichsbank Berlin accordingly.

Yours very truly,

January 13, 1932

I hereby declare in lieu of oath:

When the Adam Opel Aktiengesellschaft was sold to General Motors, I promised my son, who at the time was sole Director of the company, to place funds at his disposal to enable him to set himself up in business, in case he should not wish to return to the management of Ruesselsheim after a two years' study with the General Motors Works.

In order to enable my son to exploit his domestic and foreign patents, I repeatedly, and also in the spring of 1931, promised him the funds he required for his purposes by referring to any credit balance with the Schweizerische Kreditanstalt in Zuerich.

Defendant's Exhibit 15

Der Praesident des Landesfinanzamts Kassel
als
Stelle fuer Devisenbewirtschaftung

Frankfurt on Main,
January 25, 1932

Zweigstelle Frankfurt (Main)

On December 22, 1931, you applied for a license to dispose

	of sfrs.	3,945,000.00
	plus "	9,634.90
	total "	3,854,634.90

According to the record submitted the following amounts are to be paid to Messrs. Adler & Co. by way of a loan sfrs. 3,500,000.00
for the participation 316,500.00 " 3,816,500.00

so that sfrs. 38,134.90
should be available for delivery.

However, by letter of January 13 you informed me that an unused amount of about sfrs. 354,634.90
had been remitted to the Reichsbank Direktorium.
Thus there is a difference amounting to sfrs. 316,500.00

which corresponds to the sum which was to be used for the purchase of the shares. Accordingly only an amount of *sfrs. 3,500,000.00* is earmarked.

Kindly let me know with what funds the price of the shares is to be paid.

((seal)) By order
(sgd.) Goller

Herrn
Geheimer Kommerzienrat
Dr. Ing. h.c. Wilhelm von Opel,
Ruesselsheim

Defendant's Exhibit 16

February 5, 1932

An den
Herrn Praesidenten des Landesfinanzamtes Kassel
als Stelle fuer Devisenbewirtschaftung,
Zweigstelle Frankfurt am Main,
Attention of Reichsbankdirektor Goller,

Frankfurt a. M.

Dear Sir,

I regret that I have been unable until today to answer your letters of January 25 and February 2, since I have been away on business for several days.

As Dr. Faust informed you personally at the time, Geheimrat Dr. Wilhelm von Opel is on a trip round the world since the middle of January. For this reason your letters remained unanswered for several days.

With regard to the matter itself I beg to inform you as follows:

The remittance of the amount of sfrs. 336,771.50 is due to the fact, that this amount corresponds to that part of the credit balance of Geheimrat von Opel which was not affected by the attachment. Geheimrat von Opel had given instructions to remit this amount to the Reichsbankdirektorium shortly before he left.

Mr. Fritz von Opel decided to do without the sfrs. 316,500.00, since this amount was advanced to him by a Dutch syndicate in return for the depositing of the shares. As I was told by Mr. von Opel, he informed you at one of the conversations he had with you of his intention to enlist the financial aid of a foreign group interested in the exploitation of his patents, which he succeeded in accomplishing as stated above.

Trusting that the above information will be of use to you, I am

Yours sincerely,

(s) Uebel

Defendant's Exhibit 17

5a

Betreibungsamt (Sheriff's Office) Zuerich 1 Ruedenplatz 1

Case *No. 134*
Attachment: 135

Registered

Notice of Attachment

Debtor: Dr. Ing. W. von Opel, Geheimer Kommerzienrat
Ruesselsheim—Frankfurt o. Main

Upon request of the creditor:

F. von Opel, Braschaed near Antwerp

represented by Dr. Eugen Meier, attorney-at-law in Liestal, attachment will be made for an amount of *Fr. 3,500,000.00* plus interest and costs in the home of the debtor, on Friday noon, February 12, 1932. Fr.—25.10 costs of attachment

Zuerich, February 10, 1932

Office of the Sheriff Zuerich 1

(signed) H. Kühn

Defendant's Exhibit 18

Zuerich, February 25, 1932

SCHWEIZERISCHE KREDITANSTALT
Zuerich

D/MC

Rechtsbureau
(Legal Department)

Herrn Dr. Ing. Wilhelm von Opel,
Geheimer Kommerzienrat,

Rüsselsheim am Main.

We beg to inform you that your deposits with us have been attached by the Betreibungsamt Zuerich I (similar to sheriff's office) on behalf of Mr. Fritz von Opel, Brasschaed near Antwerp, represented by Dr. Eugen Meier, attorney-at-law, Liestal.

We assume you will take the necessary steps to protect your interests.

We remain

Yours truly,

SCHWEIZERISCHE KREDITANSTALT
(sgd.) Folkart by power of procuration.
(sgd.) G. Frey

Defendant's Exhibit 19

Form No. 28a Attachment No. 134

Betreibungsamt (Sheriff's office)

Zuerich I.

Notice of application to dispose of attached property.

To
Dr. Wilhelm von Opel

Ruesselsheim near Frankfurt on Main

The creditor Fritz von Opel, Braschaed, represented by Dr. Eugen Meier, attorney-at-law in Liestal, requests in his application of March 14, 1932, the use of the bank balance named in the above attachment.

3) Place and time of the auction will be announced later.
3) The auction will be ordered and published } April 2,
3) The objects to be utilized will be taken away } 1932

Zuerich, March 15, 1932.

Creditor demands assignment of the credit balance under attachment at the Schweizerische Kreditanstalt according to Article 131 section 1Soh and K. Ges. The credit balance will therefore be assigned to him up to the amount of his claim plus interest and costs at par in lieu of payment.

Office of the Sheriff,
Zuerich 1, (sgd.) H. Kuhn.

Defendant's Exhibit 20

REICHSBANKSTELLE
WIESBADEN, LUISENSTRASSE 21

Herrn
Wilhelm von Opel,
Dr. ing. h.c. Geheimer Kommerzienrat
Wiesbaden
Steubenstrasse

March 24, 1932

We received your letter of the 21st instant and beg to reply that according to our advice of October 22, 1931, the amount in question of sfrs. 3,500,000.00 had to be regarded as blocked on behalf of the Reichsbank. By letter of December 2, 1931, we again pointed out the situation and informed you that you could only dispose of the amount with our permission. Under these circumstances the attachment of the amount by a third party ought to have been reported to us immediately. Therefore, we are very much surprised to get this belated information only today. We now wish to clear up the whole matter as quickly as possible and would ask you to submit to us the order of attach-

ment and all papers concerning the expiration of the term of the credit of which so far we had no knowledge either.

We are expecting your reply by April 4 of this year.

Reichsbankstelle
(2 signatures iliegible)

Defendant's Exhibit 21

April 5, 1932

An die
Reichsbankstelle Wiesbaden,
Luisenstr. 21

Wiesbaden.

Referring to the conversation of today's date between your official in charge and Mr. Fritz von Opel, I beg to send you enclosed our chronologically arranged list of the correspondence with the Foreign Exchange Control Office, Frankfurt a/M, and with the Reichsbank. As you might gather from it Geheimrat Dr. Wilhelm von Opel has kept the Foreign Exchange Control Office, Frankfurt, Main, and/or the Reichsbank posted on the matter, because we assumed the matter to come under the jurisdiction of these authorities. All the more so, since we had been referred by Frankfurt to the Reich Ministry of Economics, Berlin, for personal discussions in the matter. Our assumption had been especialy confirmed by the fact, that the director of the Office of Foreign Exchange Control, Frankfurt, Main, was *Reichsbankdirektor* Goller; this led us to believe that our entire correspondence was also submitted to the Reichsbank.

On September 9, 1931, notice was given to the Deutsche Bank and Disconto Gesellschaft, Frankfurt, Main, accompanied by an application for release and reasons therefore (cf. enclosure 1).

1/

On the same day a similar notice was sent to the registration office Berlin (cf. enclosure 2).

2/

On September 17, 1931 the Deutsche Bank and Diskonto Gesellschaft, Frankfurt, Main requested supplementary records for the *Reichsbankhauptstelle* (Main Office of the Reichsbank) (cf. enclosure 3).

3/

On October 26, 1931 Director May of the Deutsche Bank and Disconto Gesellschaft, Frankfurt, Main informed us by telephone that he had forwarded the new supplementary application for release to the *Reichsbank*, and that the latter had forwarded the matter to Berlin for decision (cf. enclosure 4).

4/

On October 28, 1931 Geheimrat von Opel, after consulting Reichsbankdirektor Goller, wrote to the firm of Adler & Co., suggesting to them to waive their right to exercise the option (cf. enclosure 5).

5/

On November 30, 1931 — Adler & Co. refused, although Mr. Fritz von Opel made a personal call in Zuerich for the purpose of terminating the contract.

In the last paragraph of the letter, Adler & Co. indicated that they would hold Mr. Fritz von Opel exclusively responsible for the fulfilment of the contract (cf. enclosure 6).

6/

On December 2, 1931 — Mr. Fritz von Opel, therefore, had prepared a warrant of attachment in order to be himself secured in case the option was exercised by Adler & Co. (copy of this warrant of attachment of December 2, 1931, is already in your hands).

On December 17, 1931 — Adler & Co. exercised the option (cf. enclosure 7).

7/

On December 22, 1931 — the already prepared warrant of attachment was executed (copy of this warrant of attachment of December 22, 1931, is already in your hands).

On December 24, 1931 — the Schweizerische Kreditanstalt advised us of the blocking of the account (cf. enclosure 8).

This letter, along with other records requested by the Office of Foreign Exchange Control, Frankfurt on Main was handed to said office on January 5, 1932.

As you may see from the above selection of our correspondence with the Reichsbank or the Office of Foreign Exchange Control, Frankfurt, Main we kept both agencies well informed on all developments and were therefore justified in assuming that you, too, had been shown the files, all the more so, since Reichsbankdirektor Goller notified us on *December 1, 1931*, that "it would be advisable to leave matters pending for the time being" and "that he had informed the Reichsbank Branch Office Wiesbaden accordingly" (cf. enclosure 9).

I would ask you therefore to kindly excuse the oversight, and I shall be glad to furnish any further information you may desire.

Yours truly,

Dr. Wilhelm von Opel
(s) by Uebel

Defendant's Exhibit 22

April 14, 1932

An die
Anmeldestelle fuer Auslandsschulden
(Office for the Registration of Foreign Debts)
Kurstrasse 51, II
Berlin SW 111

Under reference to my yesterday's letter I beg to hand you the filled-in form.

I beg to point out once more that Geheimrat von Opel is at present away on a trip abroad which will last several months and for this reason is unable to comply personally with the order of registration.

Yours very truly

(sgd.) Uebel

(Translated from a photostatic copy of a copy of the German original)

To the
Office for the Registration of Foreign Debts
Berlin SW 111

Declaration

Pursuant to the 2nd executive order to the order of the Reichspraesident concerning the declaration of liabilities payable abroad, I (we) hereby report in 1 enclosure, as specified below, my (our) total foreign debts as of February 29, 1932.

I

In filling in the forms — we — followed closely the directions of the leaflet.

The statements were made to the best of my knowledge and belief.

Wiesbaden, April 14, 1932

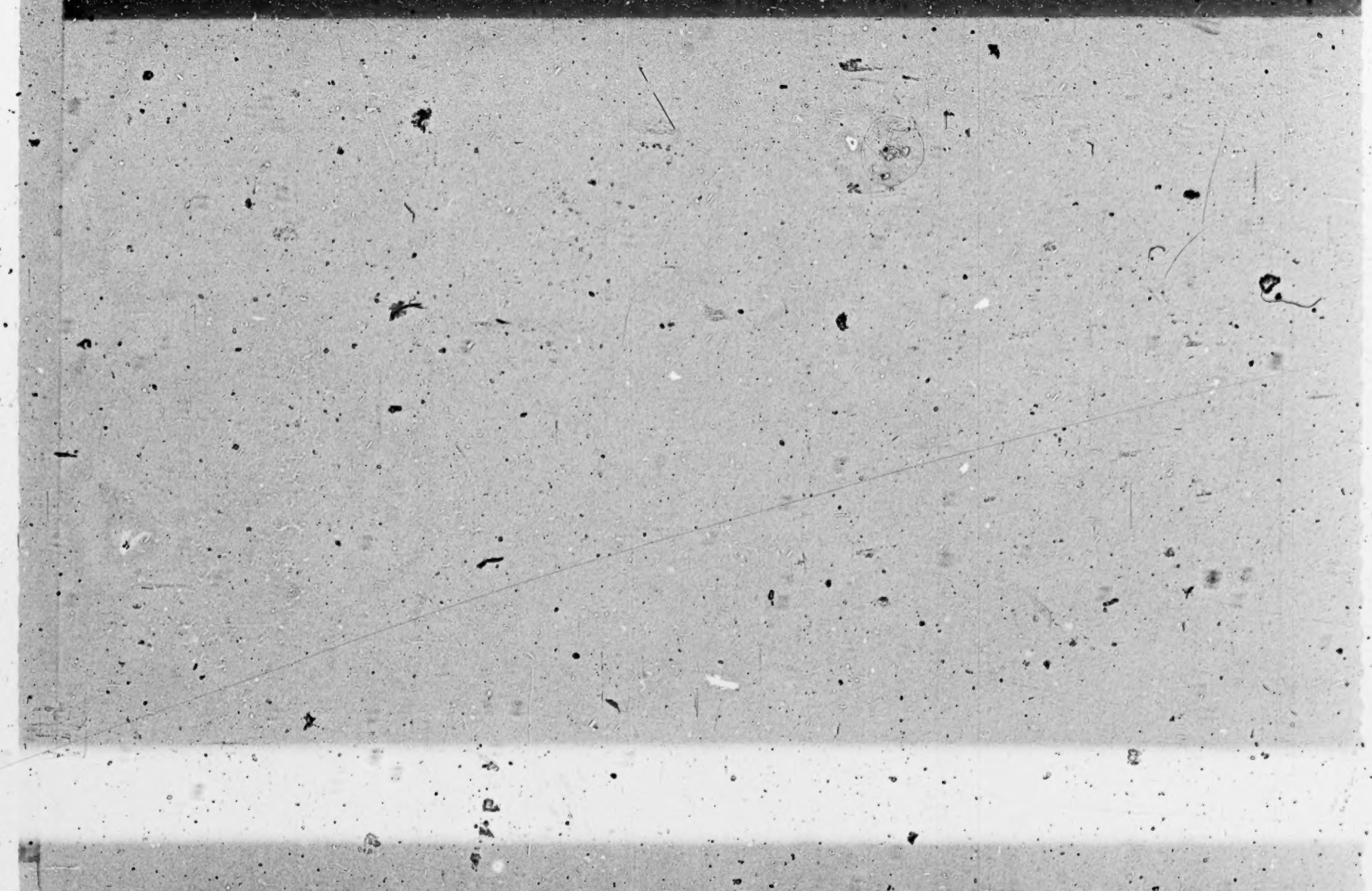
Geheimrat Dr. Wilhelm von Opel
Wiesbaden
Steubenstrasse 34

Enclosures:

1 copy Group 19 (relations to creditors)
total 1 copy

Liabilities of any kind towards other creditors, as of February 29, 1932, not covered by groups 1-18:

Kind	Currency Amount (no decimals, if £ no sh or d).	converted into Reichsmark (no Pfennigs) (see leaflet fig. 20)	due date (s. leaflet fig. 4) month	year	Name and residence of creditor	country	branch of business (Bank creditor see Group 18)	rate of interest % (s. leaflet fig. 10)	date for payment of interest (see leaflet fig. 11)
sfrs.	3,500,000.00 debenture written obligation	2,851,800.00	December	1931	Fritz v. Opel or Overseas Finance Corporation, Zuerich respec-tively	Switzer-land	Patent agent	no interest	



Defendant's Exhibit 23

Anmeldestelle
fuer
Auslandsschuden
(Office for
the Registration
of foreign debts)

Diary No. 10206/90.
Berlin SW 111, May 9, 1932

Herrn
Gheimrat Dr. Wilhelm von Opel,

Wiesbaden
Steubenstrasse 34

With reference to the report submitted to us pursuant to the 2nd executive order to the Order of the Reichspraesident concerning the registration of foreign liabilities, dated March 30, 1932 (Deutscher Reichsanzeiger ((German National Gazette)) No. 75 of March 31, 1932) we beg to send you enclosed a supplementary form to this report, together with copy for your files.

Please return your report within one week, making use of the enclosed franked envelope.

In case there should be no *secured* liabilities towards foreign creditors, a negative report is requested in any case, with a corresponding note and signature.

Anmeldestelle fuer Auslandsschuden:
(signature illegible)

0-39

[Translated from a photostatic copy of a copy of the German original]

Journal No. 10206
Trade Group 90

An die
Anmeldestelle
fuer Auslandschulden
(Office for the registration
of Foreign Debts)
Berlin SW 111

Supplement
to the declaration
of my foreign debts
as of February 29, 1932.

Of the foreign debts declared the following items are secured by securities and/or merchandise:

I. *Declaration of secured liabilities*

Currency Kind	Currency Amount	Due Date month	Due Date year	Name and Residence of Creditor
Swiss francs	3,500,000 written obligation	Dec.	31	Fritz von Opel Overseas Finance Corporation, Zuerich respectively

II. *Declaration of securities*

Exact designation of securities or goods merchandise	Name of country in which pledger is domiciled	Name of country where securities are deposited and/or merchandise stored
account with Schweizerische Kreditanstalt in Zuerich	Germany	Switzerland

These statements are to the best of my knowledge and belief.

Wiesbaden, May 12, 1932

Geheimrat Dr. Wilhelm von Opel
by order: (initials illegible)

2126



Defendant's Exhibit 24

Considerations of a personal nature concerning the gift

My principal purpose in making the gift was to head off threatened increase of the later inheritance tax. Well informed quarters claimed to know of increases contemplated like those once decreed by Erzberger, practically amounting to confiscation in the case of large fortunes) (see the financial situation of the Reich in 1931!)

In the second place it was comforting to me to know that in case of bolshevism etc. I would have a chance to retire to my son Fritz, who would then have been in a financial position to support me by virtue of the gift.

September 19, 1939.

Defendant's Exhibit 25

Fritz von Opel
Diplom Ingenieur

St. Moritz, 21 December 1936
Haus Kulm.

My death Father,

In Berlin I discussed "usufruct" for two days, in Zuerich "usufruct" for one day. I learned there to my surprise that you got in touch with Dr. Frankenberg from Budapest with regard to the same matter. I am sorry that you should concern yourself with these things even on the eve of a wedding, and I wish to assure you that you may leave those things to me with a good conscience; they are number 1 on my schedule.

When you will be here, I shall tell you all the details. The thing is much more involved than you imagine. There can be no complications, however, since no profits have accrued, let alone been distributed. So you may enjoy Budapest night-life with a wholly carefree mind. This only to restore your ease of mind.

With cordial greetings, also to mama and the Edelsheims

Yours,

(sgd.) Fritz

Defendant's Exhibit 26

Dr. ing. e.h. Wilhelm von Opel
Geheimer Kommerzienrat

RUESSELSHEIM, Main
September 21, 1933

My dear Fritz,

I received your two telegrams. As a precaution
1 and 2/ I am sending you enclosed one copy each thereof with the request to confirm their text. At the same time, I am sending you for your information some written statements I made, viz.:

3/ Origins of the gift,

4/ personal considerations concerning the gift,

5/ reasons for the sale,

6/ option agreement.

In the meantime the matter of uncle Fritz, which you know of, caused me a good deal of annoyance. I spoke in detail about it to Margot and I hope she told you all about it.

Margot probably also informed you that my passport was taken away when I arrived in Berlin. I got it back a few days later, so that I could make my trip to the Baltic cities and to Russia. I will tell you more about this trip later; I am not in the mood for it now.

Now, after my return, the matter starts all over again. They evidently always try to construe a connection between our gift and what uncle Fritz did, although no such connection exists. I was interrogated on September 19; I am enclos-
[7/] ing copy of the minutes of this interrogation. As you will see from it (see p. 5) I undertook to submit the following documents:

1. original of the option agreement with the entire correspondence;

2. correspondence concerning the negotiations regarding the gold clause;

3. correspondence with you and the attorneys concerning the negotiations regarding the gift contract;

4. documentary evidence of the settlements with General Motors on the basis of the option agreement;

(p. 2)

5. statements regarding the purchase of the securities;

6. bank statements of the credit balances.

re 1:

Dr. Fleischer told me that the documents requested from General Motors are said to be on the way. Nevertheless, please inquire at the office of the General Motors.

re 2:

There must be some telegrams from us at General Motors regarding this matter. At any rate some sent from

London by Mr. Mooney to Mr. Sloan or Mr. Smith. It may be that the telephone conversations we had concerning the gold clause were noted in the General Motors files, although I don't know how such things are handled in America.

re 3:

8/ I asked Dr. Hachenburg by telephone already yesterday to send me immediately a copy of his draft of the contract. I just got the enclosed draft of the contract from Hachenburg.

Dr. Faust already handed the original of Dr. Hachenburg's letter to the Fahndungsstelle (Search Office). I am going to supplement the record of my interrogation regarding this matter since I did not know that when I was questioned.

But let me know once more how things were done at the time. As I said above, I have asked Dr. Hachenburg to send me a copy of that letter, which, as Dr. Faust claims, is dated October 3, 1931. Dr. Faust claims also that there was some talk in this letter not only of a holding company but also of a gift, and that, as far as he remembers, even the draft of a gift contract was attached to it. He said also that Hachenburg had subsequently sent this letter to Ruesselsheim—following a discussion he had with you. The gentlemen believe we had consulted other attorneys as well; the minutes will show you what I remember of the matter.

re 4:

The Adam Opel A. G. has asked General Motors to send their documents concerning the settlement which was made with them on the basis of the option agreement. Take a look there at the documents they are going to send. But send me your own documents, too, which you got from the bank. The gentlemen are surprised to learn that the bank handed you the things without any further written instructions (p. 3) from me. Or did I give you power of attorney? You left in such a hurry at the time because we were afraid of a devaluation of the mark, and wanted to prevent enormous losses.

re 5:

Actually, this point is already covered by item 4. The gentlemen want to have the original communications to you, because they believe that the whole matter had gone through my hands.

re 6:

The gentlemen believe that you did not exchange the shares immediately, but at some later date, so that you would have had a credit balance at the bank.

As far as I can see, the present problem is this: The authorities charged with the investigation presume that brother Fritz and I had had an understanding of the whole transaction beforehand and had done everything by mutual consent.

In the case of brother Fritz they presume in particular that the contract he made with Hans was fictitious. They then assumed that I had done the same thing. They endeavor to prove this especially by alleging that the negotiations with America after the gift was made were not conducted by you and in your name and account, but by me.

I was provoked at the sarcastic tone in which the gentlemen questioned my promise to submit the originals of the desired documents. I would therefore appreciate your assistance and ask you to send me the documents as soon as possible; they will bear me out in what I have said, and I want to get the matter out of my head. So, please, send me, if possible, all the originals, without exception. We have got nothing to conceal and it will only be to our advantage to put all our cards on the table.

Maybe the letter of which you notified me by your cable of the 17th contains already some of the desired details. If you did not enclose the originals, please send them now; for they will be required here in every case.

With cordial greetings to Margot and yourself,

Your

(sgd.) Father

Defendant's Exhibit 27

((Hungarian telegram form))

70

Telegram

PREUSSISCHE JUSTIZMINISTER
BERLIN

Just learned that important decision in my case is immineat there stop Am interrupting my stay here stop Arranged for conference Frankfurt authorities Tuesday May 22 stop My son's capital is working for Germany since retransfer was always matter of course for us. Shall cause my son to advise you how long it will take to wind up his American investments for purpose of retransfer.

[dispatched about May 17, 1934]

Defendant's Exhibit 28

Manfred Wronker/Flatow
Attorney

Wiesbaden, March 16, 1931
[Rosselstrasse 7]

I, the undersigned attorney Manfred Wronker-Flatow, acknowledge having received from Geheimrat Dr. ing. h. c. Wilhelm von Opel a loan of 20,000.00 Dollars. Interest thereon is to be paid at the end of each period at the Reichsbank discount rate current at that time beginning on April 1, 1935; for the first time on July 1, 1935. Repayment is to be made by 10 annual instalments of $2,000.00 each (two

thousand Dollars United States currency) beginning on April 1, 1936; first instalment payable on April 1, 1936; for the consecutive years likewise on April 1. As collateral serve the life insurance policies which I have taken out in favor of my wife with the Iduna Life Insurance and with the French Life Insurance L. Urbaine in the amount of RM 40,000.00 respectively Francs 125,000.00, which will become payable, except in case of death, in the years 1947 respectively 1948. My wife Alexandra Wronker-Flatow, nee Manzel, recognizes by her signature this agreement as also binding for herself.

sgd. Manfred Wronker-Flatow
sgd. Alix Wronker-Flatow

Defendant's Exhibit 29

New York, March 8; 1937
123 W. 57th street

Dear Geheimrat,

First of all I have to apologize for my long silence. I was never before aware how difficult it is to write letters in which one is compelled to admit being unable for the moment to live up to obligations previously incurred.

You, dear Geheimrat, know that I incurred these obligations under circumstances which seemed to guarantee that I would be able to meet them. In spite of the most successful pioneer work (p. 2) for G.M. and the Opel firm, I have been deprived without any fault on my part of the very foundations of an arrangement, when things took a turn which no sensible and intelligent man could have been expected to take into consideration. Now after fifty years of most strenuous work and of great success I find myself with my wife in a more and more exhausting struggle to

earn a living and enough money to support and educate our six children.

To be forced in such times to write about repaying sums of money which are entirely out of proportion to my present situation is paralyzing to such a degree that one postpones it again and again hoping to be able to write something positive. The delay has become unduly long, and I am sincerely grateful to you (p. 3) for not having doubted my good will to pay my debt in spite of my long silence which would have been incomprehensible under normal conditions.

In the last three years full of work and worry, which are now behind us, I hope to have laid the foundation of an organization which in 1937 ought to yield enough to enable me to start redeeming my debt. *I am confident to be in a position to submit to you positive proposals in 1937*, probably during the next six months and would be very grateful to you for having patience until then in view of the prevailing circumstances which were brought about through [illegible] fault of my own.

Please rest assured that although everything I had built up (p. 4) in decades has been destroyed, and in spite of all obstacles and all difficulties which often seem insurmountable, my intention remains unshaken to meet liabilities which I incurred in good faith.

Since my health has so far withstood all the hard physical and mental trials and tribulations and the constant climatic and other changes, I have not given up hope that there will still be a way out of all this darkness.

My wife joins me in sending you our kindest regards and compliments, which we beg to convey to Mrs. von Opel, too.

With our best wishes for your personal welfare.

Yours very truly,

(sgd.) M. Wronker-Flatow

Defendant's Exhibit 30

June 2, 1932

Dr. Manfred Wronker-Flatow,
Adam Opel A.G.,
Russelsheim a/M.,
Germany.

Dear Doctor:

In connection with the tax situation, I have had several interviews with Fritz von Opel and his father, the Geheimrat. According to the Geheimrat, he never received my cable of October 30, 1931, accepting his proposition to retain one-half interest in his stock against a guarantee for its then substantial value payable in gold. You will recall that this matter was the subject of a long discussion between you and Mr. Mooney on the one hand, and the Geheimrat on the other, during the time that Fritz von Opel was negotiating with me in New York.

At the time young Fritz was very violently opposed to his father's proposition; in fact, this opposition was one of the reasons why he wanted to return to lay them before his father in person. When we arrived in Russelsheim and the matter was discussed, I was led to believe that young Fritz had dissuaded his father from going ahead with the proposition to retain one-half interest. Upon learning this position, I cabled New York that the payments for the stock would be made in accordance with the notice served on us by young Fritz when he arrived in New York.

The inexplicable thing about the whole transaction is that the Geheimrat now claims that he never knew that his proposition was acceptable to us, or that in fact it had been accepted by us. In other words, not only does he claim that he never received the cable accepting the proposition, but inferentially it follows that young Fritz never told his father that the proposition was acceptable to us or that I

had dispatched the cable of acceptance. Of course he was familiar with our position and with the fact that we telegraphed acceptance.

In the meantime the tax situation has arisen. How much effect this has on the Geheimrat's recollection of the transaction, I can not do more than guess. I gathered from his statement the other day, though, that he would have very much preferred to have had the transaction proceed along the lines of his offer to retain one-half of his Opel Stock. I told him so far as we were concerned, we would be willing to go back to that basis on the assumption that a mistake had been made. Such a procedure would put both parties back where they were, and doubtless would give the seller a good tax defense; but the difficulty there is that this would involve the repayment of the money paid by General Motors. So this was deemed an insuperable objection on their part.

They had proposals whereby the real transaction of purchase and sale would be screened by nominal agreements which would be nothing but mere paper transactions. For example, it was proposed that we should sell back the interest acquired. This would enable the Opels to take the position that they were the legal owners of the stock. In their judgment this would help them considerably with the German tax authorities. Simultaneously they would give us agreements to sell us the stock at any time for a return of the consideration to be paid by them; but as the consideration was not a real consideration, the whole transaction would be a mere cover and sham to which we could not be a party. In other words, we can not go through the form of selling the shares, and at the same time, as a matter of fact, own them.

It's a pity that this phase of the tax liability was not more thoroughly canvassed at the time that the stock was put to us last fall. At that time young Fritz seemed to be entirely sure of his ground, and of course so far as we were concerned, we had no option except to purchase upon demand

in accordance with the terms of the contract. Having so purchased, there is no alternative for us except to treat it for what it really is. The only exception would be in the event of a real transaction by which we were to become divested of our ownership in a real, as distinguished from a fictitious way.

In regard to the matter of arbitration, I have sent to the Geheimrat today at his hotel, the draft of contract as proposed by you. In all probability as he is sailing on the 6th, he will want to consult with his German counsel. In any event, I would suggest that upon his arrival in Germany you take the matter up and have it brought to a final conclusion.

Very truly yours,

General Counsel.

JTS:Hr

Defendant's Exhibit 31

TRANSLATION (Excerpt)

Executive Order of the Reich President Concerning Foreign Exchange Control

of August 1, 1931

[Reichsgesetzblatt 1931, I, pages 421-1425]

§2

(1) Foreign currency and claims payable in foreign currency may be acquired for German currency only by or through the Reichsbank and may be transferred only by or through the Reichsbank.

(2) Such acquisition requires a license in writing of the Office of Foreign Exchange Control. A license shall be granted where the foreign currency or the claims payable in foreign currency are intended to be used for the payment of interest or for recurring amortization payments on long-term credits.

(3) The Reichsbank may grant to other banks the right to acquire or transfer foreign currency or claims payable in foreign currency either for the account of the Reichsbank or for their own account. Para. (2) shall apply where a party acquires foreign exchange or claims payable in foreign currency from or through such a bank, except where the purchaser is itself such a bank and acts within the authority granted to it by the Reichsbank.

(4) The term "acquisition" shall include acquisition by way of execution.

§3

Foreign currency or claims payable in foreign currency which have been acquired otherwise than in accordance with section 2 may be transferred only under a license in writing of the Office of Foreign Exchange Control, except where such assets are sold to the Reichsbank or one of the banks provided for in section 2, para. (3).

(4) Foreign securities not listed on a German stock exchange may not be acquired for a consideration except under a license in writing of the Office of Foreign Exchange Control. Foreign securities not listed on a German stock exchange may be transferred only under a license in writing of the Office of Foreign Exchange Control, except where the securities are sold to the Reichsbank or one of the banks provided for in section 2, para. (3).

§4

Foreign securities not listed on a German stock exchange may be acquired for a consideration only under a license in writing of the Office of Foreign Exchange Control. Foreign securities not listed on a German stock exchange may be transferred only under a license in writing of the Office of Foreign Exchange Control, except where such securities are sold to the Reichsbank or one of the banks contemplated by section 2, para. (3).

§8

1. "Currency" for the purposes of this Order shall mean species of money (coins, paper money, bank notes and the like), foreign payments [*Auszahlungen*], remittances [*Anweisungen*], checks and bills of exchange.

2. "Claims payable in foreign currency" for the purposes of this Order shall mean claims which entitle the creditor to payment in a specific foreign currency. The term "claims payable in foreign currency" shall not include foreign securities as well as claims in foreign currency arising from contracts of insurance made before July 15, 1931.

3. "Foreign securities" for the purposes of this Order shall mean securities issued by a person or entity that is domiciled or has its place of management in a foreign country or in the Saar Territory.

4. "Precious metals" for the purposes of this Order shall mean gold and silver, platinum and platinum metals in the forms customary in the trade with such metals.

§12

Any transactions which violate any of the provisions of sections 3 to 11 are void.

§15

(1) The Government of the Reich may order that foreign currency, claims payable in foreign currency and foreign securities not listed on a German stock exchange and acquired after July 12, 1931, shall, within a period to be determined, be reported or tendered and, upon demand, sold and transferred to the Reichsbank in accordance with its general business conditions. Section 2, para. (3), first sentence, shall apply.

(2) In issuing such an order the Government of the Reich may in its discretion designate the categories of persons to whom the Order shall apply. The duties which shall be imposed by such an order upon the owner of a reportable asset shall also be complied with by anyone who holds such an asset as belonging to him or who, through a fiduciary or a business corporation or partnership or in some other manner, exercises the power to transfer such asset. Anyone required to comply with the duties of a taxpayer under the rules of the Reich Revenue Code, especially sections 103 et seq., is also required to comply with the duties as defined by such an order of the Government of the Reich. The Government of the Reich, may, moreover, designate the assets to which such an order shall apply, according to currency, minimum value of individual holdings, or other criteria which it may deem appropriate.

§18

(1) Any person who deliberately

1. in violation of section 2 acquires or alienates foreign currency or claims payable in foreign currency against German currency;

2. in violation of section 2 acts as an intermediary in the acquisition of alienation, for German currency, of foreign currency or of claims payable in foreign currency;

3. violates any of the provisions of sections 3, 4, 6, 7;

4. sells or acquires foreign currency or claims payable in foreign currency at a price higher than the price permitted under sections 9 and 10, or acts as an intermediary in such a transaction;

5. enters into future transactions concerning foreign currency or claims payable in foreign currency or precious metals in exchange for German currency, or acts as an intermediary in such a transaction;

6. fails to comply in due time and/or due form with an order issued by the Government of the Reich under section 15

shall be punished by imprisonment or, in especially serious cases, imprisonment with hard labor not exceeding 10 years, as well as a fine not exceeding the tenfold value of the currency, the claims payable in foreign currency, the securities or the precious metals with regard to which the punishable act was committed.

(2) Where any of the acts defined in para. (1) was committed negligently, a fine only shall be imposed. In case the fine is not collectible, imprisonment shall be ordered.

(3) The punishment defined in para. (1) shall also be imposed on anyone who deliberately abets or encourages

another to do an act punishable under section 1, or who offers to do such an act for another.

(4) In addition to the fine, the assets with regard to which the punishable act was committed may be confiscated on behalf of the Reich, even if they do not belong to the principal or an accessory. Confiscation shall not take place if the person affected thereby proves that he neither knew nor was in a position to know that such act was punishable and, in addition, that he derived no advantage from that punishable act. Where confiscation proves to be not feasible, the court may then order the confiscation of the equivalent in money. In determining the value of foreign currency and the claims payable in foreign currency, the average rate of exchange, computed according to the provisions of this Order, as of the date of the prohibited act, shall be used. In order to secure payment of the fine or collection of the forfeited assets, the property of the accused may be seized either in part or in its entirety.

Defendant's Exhibit 32

The District Court Wiesbade, 22 of May 1948

Present: Gegenwartig:
Justizinspekter Gocke,
als Rechtspfleger

No one appeared before the Judge at the date determined for the opening of the last will of the couple Wilhelm von Opel and Marta geb. Bade, Wiesbaden.

The Death Certificate showing that the testator died on May 2, 1948 is to be found in the files. Miss E. Esklony already submitted before an envelope showing on the outside the following statement:

"Our last will—now valid—November 20, 1938."

It was established that the envelope was not mutilated. The envelope was opened and the joint will of the couple including three codicils taken out of the envelope. The last will including the three codicils was declared opened with the exception of a certain part designated by red parenthesis. The will is dated Wiesbaden, November 20, 1938. It begins with the following words:

"Unter Aufhebung"

and ends with the words:

"Tochter angeordnet"

The codicils are dated Wiesbaden May 9, 1942, February 26, 1945 and December 10, 1946. They begin with the words:

a) Da unser Sohn

b) Jn §7

c) Die verhonderten

They end with the words:

a) Mainzer Strasse No. 55

b) kummerte

c) ausser Kraft gesetzt

Opened Wiesbaden, May 22, 1948, District Court 4a.

JOINT WILL

In abandoning all previous last wills, we provide the following after making this statement: We married under the law of "Katzenellenbogener Landrecht", which by the provisions of the german's civil code have been trans-

formed into "community of the earned property". For the purpose of clarifying the condition of our property we state the following:

1. — — —

2. Both spouse did not bring any property into the community.

3. Therefore all of our property is to be considered as community property.

I, the husband, appoint as my preliminary heirs (contingent on death of preliminary heirs);

1. Our son Fritz 1/2

2. Our daughter Elinor 1/2

§2.

We appoint as heirs, succeeding our daughter Elinor, her issue and if she shouldn't have any issue our son Fritz and substituting him his issue.

Our son Fritz shall be a preliminary heir (contingent heir) free from any limitation as far as he can be free under Section 2136 of the Civil Code.

The heirs succeeding our son Fritz under this appointment, shall take Fritz' place only if our son Fritz should not provide otherwise by will. We assume that our son, if he should die without children, will give one-half of his property to an endowment to be designated by him.

§3.

The estate of each of us shall remain undivided for a period of ten years after the death of the surviving spouse.

If my wife should die before I die, I shall act as an executor of her will and administer her estate with the right to appoint our son Fritz as co-executor. After my death, our son Fritz, shall administer my estate as well as the estate of my wife. He might appoint a co-executor or designate a successor or appoint someone else in his place as executor until such time as he recalls such appointment. If I should die before my wife, the community property shall remain undivided and shall be administered by our son Fritz until the death of my wife. For this purpose our son Fritz was given power of attorney to be considered irrevocable which becomes effective at the moment of the date of my death (the husband's death). The power of attorney does not authorize any disposition of the real property in Wiesbaden, Steubenstrasse 34 and Schwalbach "Sonnenhof".

§4.

If our daughter Elinor should exercise her eventual right to claim a compulsory share she or her issue are to be credited with the amount of 500,000 Reichsmark, plus 5% interest given to her as endowment at her wedding. This amount is to be included in her share of the estate or in her compulsory share. The same rule applies in regard to the current gifts given to our daughter Elinor up to this time. Our son Fritz or his issue is to be credited with a gift of six-million par value shares of the Adam Opel A.G. given to him by gift contract of October 5, 1931. This gift is to be included in his share of inheritance in accordance with the provisions included in the gift contract referring to the equalization in case of distribution of our estate. However, in agreement with our son Fritz there shall be the following supplement: If the property given to our son Fritz as a gift should be put into a holding company, the valuation of the gift shall be determined by the tax balance sheet of the holding corporation. However, the value should not exceed ten-million Reichsmark.

This gift shall, however, not be added to the estate for the purpose of supplementing claims for compulsory shares in the estate.

§5.

The income of the estate of my wife shall go to me (the husband) as long as I live. The proceeds of my estate during the lifetime of my wife shall go—50% to my daughter Elinor and 50% to my son Fritz. After the death of both of us the net proceeds of both estates shall be divided as follows: 50% to my daughter Elinor and 50% to my son Fritz. Because of the behavior of our daughter Elinor to us and because of her way of living not being approved by us, we determine that the net proceeds to be actually paid to her shall not exceed per annum, 30,000 RM. However, this limitation shall be stricken if our daughter during the lifetime of both of us, should permanently renounce her present surrounding and should for this reason acquire pardon of both of us. After the death of our daughter her issue has a right to claim the payment of an amount sufficient for their livelihood and education in accordance with their social standing. In finding the needs of the issue of our daughter Elinor, their own property and their claim against persons obliged to take care of them are to be considered.

In the distribution of the estates, payments made before such distribution are to be accounted for.

If one of our children should reject his share in the estate,

§6.

the other child shall substitute him. If one of our children, at the death of one of us, should demand her compulsory share, such child shall only get the compulsory share from the estate of the other spouse. The same rule shall apply

for the issue of our children in the case our children shall pre-decease us. If bankruptcy proceedings should be started over the estate of one of our children or if the share of one of our children in the estate should be levied by a creditor or otherwise vested, such child shall be given only the compulsory share in both estates.

§7.

I, the husband, hereby provide for the following legacies on behalf of employees working in our house in Wiesbaden at the time of my death or working at the same time in my office in Russelsheim:

1. The house servants shall be given 150 Reichsmark for each year for which they are employed in our house.

2. The chauffeur and the office personnel shall be given one month's salary for each year they worked with me—each beginning year should be considered as a full year. However, no person shall obtain more than 10,000 Reichsmark.

§8.

We, the couple, hereby establish the following endowments which become effective at the death of the husband:

1. The amount of 100,000 Reichsmark should be used for the purpose of establishment of an endowment under the name "Wilhelm von Opel endowment", in favor of employees working at least 50 years with Adam Opel, A.G. The interest of the endowment capital shall be used for the purpose to take care of the cost of two annual trips of the employees, 50 years with the firm, and one social meeting of them in Rus-

selsheim. The remaining part of the interest shall be used for the purpose of supporting employees longer than 50 years with the firm provided they are in distress. The endowment is to be administered by the management of Adam Opel, A.G. The management shall take care of the establishment of the endowment.

2. The amount of 750,000 RM (however not more than 5% of our community property) shall be given to an endowment called "Wilhelm von Opel Hospital". The endowment shall be used for the purpose of building a hospital in Russelsheim. This endowment, however, is given with the contingency that, at the time of my death, the plant at Russelsheim continues to operate under the style "Adam Opel". Furthermore the endowment is given under the contingency that the municipality of Russelsheim and the firm Adam Opel, A.G. guarantee the maintenance of the hospital. Firm and municipality shall jointly administer the endowment; however, the consent of our son Fritz is to be called for before important questions are to be decided. If the establishment of a hospital appears to be unadvisable, our son is authorized to designate the endowment for another purpose but it is understood that the endowment shall be used for the building of a house in Russelsheim appearing under the name "Wilhelm von Opel". If a building worthy of the memory of the founder and of permanent cultural significance cannot be established, the endowment shall be recalled. Furthermore the endowment is to be recalled if I should establish a hospital or another building for similar purpose during my lifetime.

§9.

I, the husband, retain the right to distribute by codicil a further amount of 100,000 RM.

This will stated above shall be also my will.

We desire to mention that we do not deprive our daughter Elinor of any share in our estate in spite of her letters written in the spring of this year. In these letters she very seriously harmed us, wherefore we would have been entitled to deprive her of any share in pursuant to the statutory provisions of Section 2333 BGB. If our daughter Elinor would not have failed so completely, we would have provided in favor of her for even more far-reaching equalization for the gifts made to our son.

Wilhelmsruh, A.M. d. 20 Nov. 1938

gez. Marta von Opel, geb. Babe
" Dr. Wilhelm von Opel

CODICIL

Opened by the District Court 4a, Wiesbaden, May 22, 1948.

Since our son Fritz is at present abroad we would like to provide for the case that he might be temporarily prohibited to actually perform the tasks of an executor entrusted to him. The supplement of joint will is as follows:

We appoint as further executors:

Herrn Alwin Steffan, geboren am 30 Juni 1891,
Bankier Frankfurt a. Main, Neue Mainzerstrasse Nr. 55

gez. Dr. Wilhelm v Opel

Wiesbaden 9 May 1942.

* * * * *

Opened Wiesbaden May 22, 1948 by the District Court, 4a gez. Gocke, Justizinspektor als Rechtspfleger.

CODICIL

In §7 of our Will of November 20, 1938, legacies are provided. This provision is hereby changed as far as the legacy on behalf of our Chauffeur Berg is concerned. In finding the amount to be paid to him, the period of his military service shall not be included because he did not take any interest in us or in our interests during his several furloughs.

gez. Dr. Wilhelm von Opel
" Marta von Opel

Wiesbaden, February 26, 1945

* * * * *

CODICIL

Opened by the District Court, Division 4a,
Wiesbaden, December 10, 1946

Changed and distressed conditions compel us to our sorrow to strike the endowments provided for by paragraphs 8 and 9.

8. Provides for the endowment on behalf of employees of Adam von Opel A.G. in Russelsheim who stayed there longer than 50 years and the stablishment of a hospital in Russelsheim.

9. Refers to our joint legacy of 100,000 RM, to be given by each of us.

This provision is hereby stricken.

gez. Marta von Opel, geb. Bade
" Dr. Wilhelm von Opel

Wiesbaden, d. 10 Dec. 1946

Defendant's Exhibit 33

(LETTERHEAD OF
CITY BANK FARMERS TRUST COMPANY)

New York, October 20, 1931

Mr. John Thomas Smith, Vice President,
General Motors Corporation,
57th Street & Broadway,
New York, N. Y.

Dear Sir,

Referring to your inquiry of our Mr. Pratt regarding the registration of 47625 shares General Motors Corporation Stock which you are to deliver to us for the account of Mr. von Opel, we wish to advise you that our nominee in whose name these shares are to be registered is King and Company, 22 William Street,

Very truly yours,

(sgd.) H. D. Sammis.
H. D. Sammis,
Vice President.

Defendant's Exhibit 34

Drs. J. & E. Henggeler
Dr. Otto Schuppisser
Dr. H. Widmer
Attorneys
Zurich

Zurich, January 5, 1935

Mr. Baron Fritz von Opel,
Villa Kulm,
St. Moritz

My dear Baron:

While Dr. Henggeler is away the Tax Office of the Canton sent a letter on December 29, 1934 as per copy enclosed. Dr. Henggeler will return from his vacation about the middle of January and will then deal with the matter.

A copy of the letter from the Tax Office will be sent to Dr. Frankenberg for his information.

Very truly yours

1 enclosure as mentioned.

Defendant's Exhibit 35

Drs. J. & E. Henggeler
Dr. Otto Schuppisser
Dr. H. Widmer
Attorneys
Zurich

Zurich, December 27, 1934.

Baron Fritz von Opel,

Dear Baron,

The city council of St. Moritz maintains a very unsympathetic attitude towards the request of the 18th inst. of which you know, in contrast to the assurances previously given when your name was not stated. This becomes evident in their letter of the 21st inst. copy of which is enclosed and answer of which was delayed because of the holidays. The reason for this attitude on the part of the city is apparently that the gentlemen of the city council entertain much too great an illusion in regard to tax opportunities of the city as they are well aware of your financial situation and the size of the estate inhabited by you.

For the time being I replied as per enclosure; I kept it non-committal. I will contact mayor Natter by telephone. Especially the point that you are staying in St. Moritz only a relatively short time each year while the taxes are paid for the entire year, should be stressed. It will also be necessary to make a *definite* arrangement regarding the tax payments. Unless this is done, a request for residence permit seems to be useless since you would merely be continuously subjected to new taxation attempts.

Personally I hold the opinion that the matter should not fail on your part because of tax payment of a few hundred francs more or less, since a residence permit in connection with permanently rented real estate entails great advan-

tages. In the event, however, that the city council should persist in its views in every respect, I would advise you to drop the request. Should you still desire to have a Swiss residence, application for such can be made at much more favorable conditions and at smaller tax rates in other cities, as for instance on the Lake of Geneva. The provision that you or your wife would have to spend some weeks every year in a hotel at that residence, should be fulfilled without great difficulty. I shall transmit copy of this letter and of the letter of the city council to Dr. Frankenberg for his information.

With best regards,

yours respectfully,

Dr. J. Henggeler

Enclosures:

1 passport
copies of the letter of the city council St. Moritz
and of my reply.

Defendant's Exhibit 36

0-106

Copy

Copy of letter of November 10, 1945.

My dear father:

I hope that you will soon be interrogated by the American authorities regarding the usufruct matter. In America it is customary that counsel is present during such negotiations. You must insist on this, particularly since you were

not present during the negotiations of Dr. Gros with the Reichsbank. We have learned from personal experience, although we speak English fluently, how difficult it is to express oneself correctly in a foreign language as far as legal matters are concerned, or even to understand questions and their true meaning correctly. Moreover, the worries and the hardships of recent years have certainly not improved your nerves, and it will not be easy for you to concentrate under stress and excitement.

I am therefore making the following very important suggestions:

1. Draw up in cooperation with Dr. Gros a detailed memorandum on the usufruct matter. Attach to this memorandum authenticated copies of all affidavits and other documents for which I asked you in my letter of October 18. Submit this memorandum and the documents to the authorities who are interrogating you.

2. Your English is very poor, which may lead to grave misunderstandings and result in the most serious consequences. I quote as an example the interview which you are alleged to have granted to an American reporter, and which has caused the most unpleasant sensation in American and French newspapers.

Don't be sensitive on this point and admit frankly that you don't speak English fluently, and request at the beginning of the interrogation that all questions be put to you in German and that you may answer them in German only.

3. It is not customary in America to have the transcript signed by the interrogated. It is therefore very easily possible that through misunderstandings and mistakes in translation an incorrect transcript is made. Don't, therefore, go into lengthy speeches and explanations, but have the thoroughly prepared memorandum in German at hand, which covers all questions and to which you can always refer in the interrogations.

4. It is the accepted custom in America to bring along legal counsel to negotiations of this kind. I would urgently advise you to take Dr. Gros along, particularly since you did not take part in his negotiations in Berlin regarding the usufruct matter. In America nobody ever takes a step in such matters as these without legal counsel. It would be very foolish if you did otherwise.

You may consider the above arguments as far-fetched, but the matter is too important to be left to chance. There is no equivalent in English law for the German "Niessbrauch". The English term "usufruct" (an abbreviation of the Latin "usufructum") denotes something entirely different, viz. a right "in rem". In German law, however, a "Niessbrauch" must be created, and even such a right once created, may be destroyed by "confusion and accession". All that remains is not a right "in rem" but a right "in personam". From the wrong translation or interpretation of this one word, the most serious difficulties have resulted in my case. You can avoid the risk of such wrong translations or interpretations only by keeping strictly to a memorandum written in German.

Enough for today. With cordial greetings for you and Mama,

Yours

sgd. FRITZ

Defendant's Exhibit 37

Adler & Co., Bankers

Zurich, April 15, 1931
St. Peterstr. 16

Herrn
Diplom-Ingenieur Fritz von Opel
Leopoldslei 85,
Brasschaet b/Antwerpen

Dear Sir,

We confirm the discussions which we conducted with you in matters concerning the Overseas Finance Corporation Limited, and repeat in the following the agreements concluded between yourself and our firm, acting at the same time as representatives of the Overseas Finance Corporation Ltd.

We hereby grant to you the right to buy from us on or before November 15, 1931, par value *sfrs. 300,000.00* shares of the Overseas Finance Corporation Ltd.—viz. 60% of the stock capital—at the rate of 125%, if upon exercising this option you open a credit in the amount of sfrs. 3,500,000.00, for 2 years, in favor of said corpration. This credit is to be used for the acquisition of various patents and participations; in particular, it is also intended to be used for financing the commercial exploitation of patents in your own possession.

Interest on this credit is to be paid to you at the current lending rate of the Schweizerische Nationalbank. Moreover, Overseas Finance Corporation Ltd. assumes the obligation to allow you for the entire term of the credit a share of 25% of its net profits before distributing a dividend to its shareholders.

On the other hand, we have agreed that we are entitled to tender to you, on or before December 31, 1931, the above mentioned shares of the Overseas Finance Corporation of sfrs. 300,000.00 par value at the rate of 105½%. In this

case, too, you will assume the obligation to grant to the Corporation a credit of sfrs. 3,500,000.00 but for one year only. The credit is to be used in the same way as stipulated above, however, excluding the additional participation in the net profits as agreed upon for the first alternative.

If and when you exercise your right of option, respectively when we exercise our seller's option on the shares you will be entitled to 2 seats on the board of management of the Overseas Finance Corporation Ltd., while at least one seat must be reserved to represent the minority. You further assume the obligation to make available to us your advice and assistance as circumstances may require.

You promised us to furnish a declaration of guaranty by your father, Geheimrat Wilhelm von Opel, for the fulfillment of your obligations resulting from this agreement.

Anticipating your confirmation we remain,

Yours very truly,

Adler & Co.
Kommandit-Aktien-Gesellschaft
(signature illegible)

Defendant's Exhibit 38

Fritz von Opel
Dipl. Ing.

Brasschaet, April 27, 1931

Messrs.
Adler & Co., K.-A.-G., (Kommandit-Aktien-Gesellschaft)
Bankers
Zuerich

I hereby confirm our oral negotiations, particularly your letter of April 15, 1931, the contents and stipulations of which I fully agree to and accept.

Let me inform you on this occasion that I have already communicated with my father and that he is willing to make the payment of the sfrs. 3,500,000.00 in question. He is already holding in readiness for that purpose at the Schweizerische Kreditanstalt in Zuerich a sum of money of approximately the same amount.

Without anything further for today I remain with kindest regards

Yours very sincerely,

sgd. FRITZ VON OPEL

Defendant's Exhibit 39

Deutsche Bank und Disconto-Gesellschaft
Filiale Frankfurt (Main)
Foreign Exchange Department

(Devisenabteilung)

Frankfurt (Main) September 17, 1931

Herrn
Geheimer Kommerzienrat
Dr.ing.h.c. Wilhelm von Opel

Wiesbaden
Steubenstr. 34

Subject: Third series of rules and regulations implementing the executive order of the Reichspraesident concerning the Control of Foreign Exchange, dated August 29, 1931.

We are in receipt of your report of the 9th inst. regarding the above matter, and after consulting the Reichsbankhauptstelle (Main Office of the Reichsbank) ask you here-

with to state the date of the conclusion of the contract and to deliver into our custody the original contracts or certified copies thereof. The documents will be returned to you after your report has been disposed of.

At the same time, we beg to call your attention to the fact that in view of the special character of your case it will probably take more than ten days to arrive at a decision.

Anticipating your reply, we remain

Yours truly,

Deutsche Bank und Disconto-Gesellschaft
Frankfurt (Main) Branch

(sgd.) illegible (sgd.) illegible

Defendant's Exhibit 40

Reichsbankstelle [Reichsbank Branch]

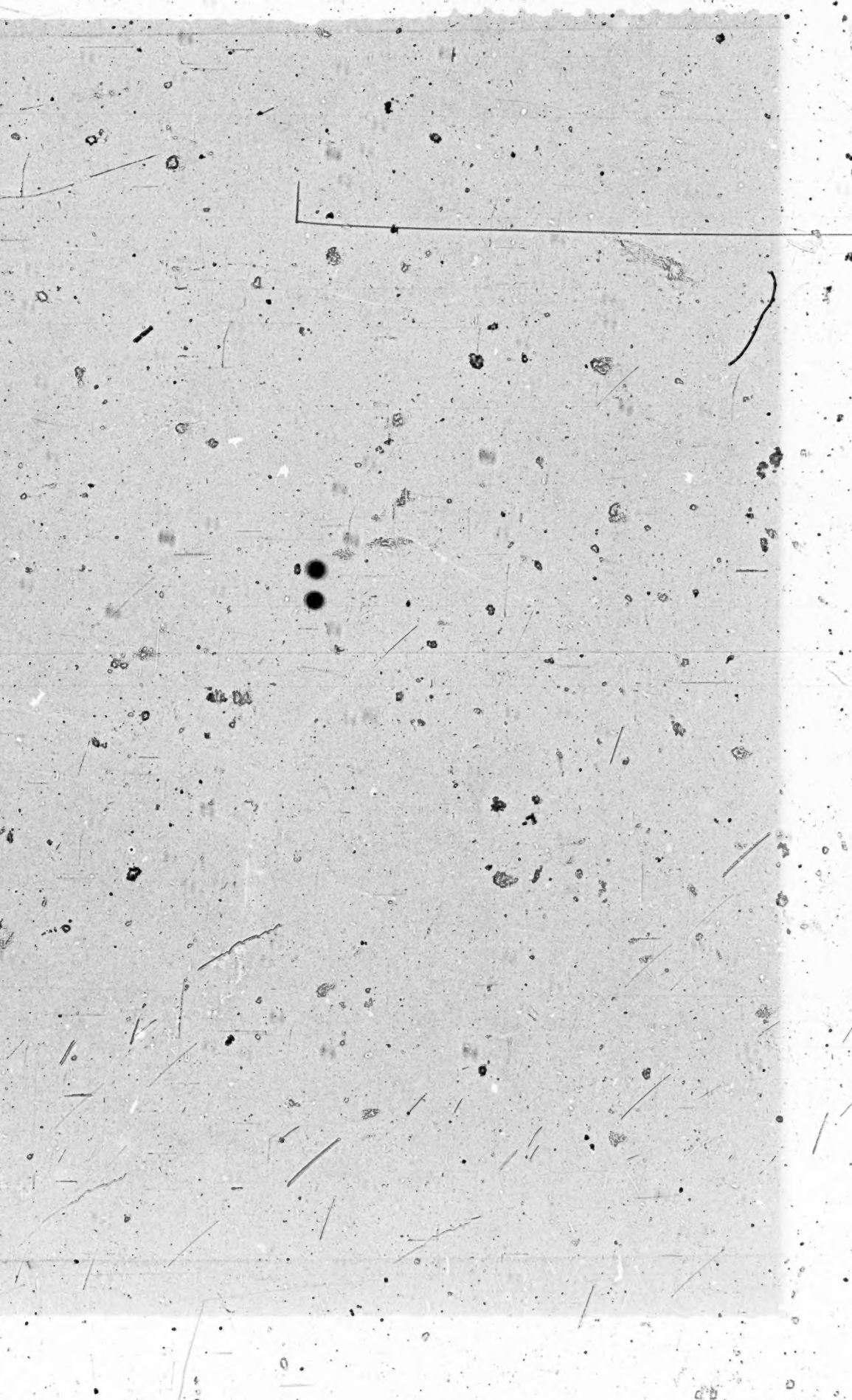
Wiesbaden, October 22, 1931

Herrn
Dr. Wilhelm von Opel
Geh. Kommerzienrat
Wiesbaden
Stiftstr. 34

(Ober Inspektor Ludwig Frankfurt)

(Inspektor Katz Wiesbaden)

The Devisenbewirtschaftungsstelle (Office of Foreign Exchange Control) issues licenses for the acquisition of for-



eign exchange, if proof is submitted that the proposed business trip is justified from an economic point of view. We are therefore not in a position to allow you to keep the small amounts of foreign exchange mentioned in item 2 of your return and request you to deliver the same to us without delay, with the exception of silver coins.

A transfer on your part, of your credit-balance No. 1 of sfrs. 9,364.90 to your son, who is living abroad is possible only with the permission of the Devisenbewirtschaftungsstelle (Office of Foreign Exchange Control) Frankfurt/Main. Your application for release can be approved by us only if you produce a license issued by that Office and then only in an amount required for about 10 days.

Regarding the bank balance of

sfrs. 3,845,000.00

in Zurich which you also reported we wish to state that use of that sum for the purchase of shares of the Overseas Finance Corporation and for a loan to said company is also only possible if permission of the Devisenbewirtschaftungsstelle (Office of Foreign Funds Control) Frankfurt/Main is obtained.

We are returning the documents you sent us and leave it to you to contact the Devisenbewirtschaftungsstelle Frankfurt/Main immediately and submit their decision to us. We will then reply to your application for release.

Reichsbankstelle

(sgd.) 2 signatures illegible

(It is necessary for Mr. Fritz von Opel to confer personally with the Devisenstelle Frankfurt/Main (Reichsbankdirektor Goller). Possibly with the Reichswirtschaftsministerium Berlin. As agreed, the Devisenstelle and Reichsbank will wait until then (middle or end of next week).

(sgd.) FAUST

November 6, 1931)

Defendant's Exhibit 41

013 Wire DEUTSCHE REICHSPOST Dec. 19, 1931
113 antwerpen 02050 19/18 19/22. 1147
O P E L Steubenstr. 34 Wiesbaden

= Adler has exercised option overseas demands making available the credit please arrange remittance cable advise greetings fritz—

Defendant's Exhibit 43

MEMORANDUM

It is—and always was—our wish to cooperate to the fullest extent with the authorities regarding the investigation of Mrs. von Opel and myself, this in spite of the most severe handicap, namely the fact that we are not only not accused of anything, neither in detail nor in general, but are simply left guessing as to what part of our lives led the authorities to a misinterpretation.

As we feel not only innocent but, in fact, more antinazi than most Americans who lack any personal experiences, our wish to contribute whatever we can to an investigation is very natural: we are convinced that the deeper and the more thoroughly the authorities look into our personal lives and activities, the sooner they will realize that we always have been and always will be on the side of justice and decency.

Every American is, down to his very core, American. This country—at least for the last three or four generations—was spared any internal strife, it was not shaken in its foundations by wars, revolutions and counter-

revolutions, by separatist movements or by devastating inflation such as threw the culture-bearing German middle-class into the gutter.

This country—through its whole history—followed a straightforward course towards liberty of the individual and towards the improvement of its economic standards: *it always was easy for Americans to be American, for the* simple reason that the nation as a whole and the single individual always had—at least in the basic concepts—identical aims.

The natural easiness with which an American can identify himself with his government causes every American, quite subconsciously, to assume that natives of all other nations too have the same inborn relation to their governments. They overlook the fact that government "by the people for the people" is strictly limited to American shores, and that in other nations, at least minority groups are in constant basic discord with their government.

This inborn patriotism of every American makes it difficult for him to understand "unpatriotic" people, more so in case of Germans, who are, as a race,—rightly or wrongly—known to be nationalistic. An American can hardly understand why a German speaks or acts against his nation, and is inclined to believe that such a person is not speaking the truth but merely wants to cover his true feelings for some sinister purpose.

The average American is not aware of the fact that most of the leading thinkers of Germany in one way or the other were vehemently outspoken against their nation. Goethe, who is considered the greatest German who ever lived, wrote: "Germany is naught, but the individual German is much—although they like to believe the opposite. The German will have to be, like the Jews, uprooted and dispersed the world over, before all the good which is in them and which would work towards the well-being of all nations can be brought out . . ." Fichte, the most nationalistic of

German philosophers, said: "If you find yourself in discord with your nation, follow but your conscience and give up your nation." I could go on for hours with similar quotations. Suffice it to state that every single German of true greatness analysed and branded certain shortcomings of the German mentality, and scores of them, through the centuries, lived in forced or voluntary exile.

We both claim to be "patriotic" in the best sense of the word, not in the blind sense of "right or wrong, it is my country", but ready to give our lives—even in a fight against her temporary rulers—if ever Germany could be raised again to her former cultural lever: a culture which deteriorated through the gain of political power and which, through the former Kaiser's persistent efforts, and Hitler's, the successful painter's, leadership has arrived at the zero-point of a vacuum which nobody ever dreamed attainable.

We are "patriotic" insofar as we believe that the Germans—as all other members of the Caucasian race—possess abilities which should be put to work for the benefit of the whole world, their artistic talens, their manual skill, their industriousness.

We are, however, "unpatriotic" in our belief that other trends of the Germans (to name a few: their lust for power, their "discipline" which readily falls prey to all—good or bad—orders, their belief in their own superiority) should, through the hard way of defeat and the slow way of education, be once and for all eliminated.

We both are "patriotic" insofar as my wife adores German music and I adore German literature and its 16th century paintings; we are, however, "unpatriotic" enough to realize that all nations and all races contributed their part to the component culture of the Occident. With one word, we endeavor to be impartial and—inopportune as it may look in a period full of shortsighted nationalism—we tried and still try to be true "citizens of the world", critical

of all narrow-mindedness and ready to accept from all nations or races any contribution towards the common good of mankind.

* * * * *

We are not accused of anything and therefore are not in a position to focus our "defense" at any definitive point. As we are sure, however, that we always respect this country and its institutions and that nothing we said or did can be deemed inimical, or even to the smallest degree disloyal, we always believed that the whole action against us must be based either on willful defamation by some interested person or on correct but misinterpreted facts.

As the FBI assured me that the former is not the case ("We don't pay attention to mothers-in-law, neighbors or business partners"), we have been left guessing as to what part of our life could be so wrongly interpreted. We finally found but one explanation: that we became suspects on account of our life abroad.

For this reason I take the liberty to cover, in the following pages, six points which I consider important, namely:

1.) Why did I come to the United States in 1940?

2.) Why did I become a citizen of Liechtenstein?

3.) Who have been our friends and acquaintances abroad?

4.) Our trips to Germany.

5.) Can I be an agent of Hitler?

6.) Can we be Nazi sympathizers?

Should the authorities want to have any additional point covered, or to have additional questions regarding the above

points answered, we shall most gladly oblige; we have nothing to hide, but can only gain by thoroughness.

* * * * *

Part I

Why did I come to the United States in 1940?

I am fully aware of the fact that every person who has come to the United States after the outbreak of the European war is suspected to have come here for illegal purposes, but I hope that by fully explaining the four motives of my trip in 1940 I shall help the authorities to understand its reasonableness.

1.) *It was a routine trip.*

As the immigration authorities already know, I came here several times between 1924 and 1928, together with my father and my uncle, mainly to study modern machine tools and to buy millions of dollars worth of equipment for our factory. In 1929 and 1930 I spent here a full year in behalf of the General Motors Corporation to study manufacturing methods.

In 1931 I came over for negotiations with General Motors and sold them all of my German Opel Corporation stock for American dollars which Overseas Finance Corporation, a Swiss company which I control, upon my advice, immediately invested in this country in the form of fully or partly owned American corporations.

These corporations, all run by Americans, required a certain amount of control and, having been a director in five or more corporations, I came over between 1932 and 1938 on regular yearly trips. The trip scheduled for spring and summer in 1939 had to be postponed until 1940, as I was suffering from a compound leg fracture which kept me on crutches all through 1939.

2.) *It was an emergency trip,* necessitated by the financial difficulties of the Hurricane Petroleum Corporation (Shreveport, Louisiana) in which Overseas Finance Corporation had invested over one million dollars.

Hurricane Petroleum refined in three refineries close to 20,000 barrels of crude per day, but after the Madison trial of the big oil corporations the gasoline prices declined and the majority of independent refineries got into difficulties. All through the fall of 1939 and the spring of 1940 Overseas Finance Corporation poured all available funds into the Hurricane Corporation, and the main purpose of my trip in 1940 was to look into the Hurricane situation and arrange if possible some additional financing.

The negotiations, however, were resultless and in the summer of 1940 the corporation went into bankruptcy which—as I had personally guaranteed the biggest outstanding accounts—caused a total loss of about $700,000.00.

3.) *We had planned a trip thrgugh the USA and Canada.*

In the spring of 1940, on reports of the co-directors, I still thought that—as Hurricane was basically sound—a permanent bank loan would help it out of the temporary crisis. I believed that I could easily arrange in New York for additional funds within a few weeks and would then be free to take my wife and her friend, Mrs. Annemarie Clarac-Schwarzenbach, for an extended trip through the United States, Canada, and, time permitting, Alaska.

As I wanted to spare my wife a month of New York heat, we had arranged that she should follow me from Switzerland a month later and we had intended to leave New York immediately upon her arrival.

Mrs. Schwarzenbach (who died in November, 1942) was a well known Swiss writer (married to a French diplomat) who had traveled extensively in the United States, India, Iran, Irak, and Russia. She had lived in a neighboring

village in Switzerland and was our house guest there and here for more than a year. By her publications she was known to be most ardently anti-fascistic and she was for this reason persona non grata in Germany and deported from there by the Nazis. She worked mainly for the "Basler National Zeitung", the leading paper in the Swiss fight against Nazism.

For our contemplated trip Mrs. Schwarzenbach had entered into contracts with the "Basler National Zeitung" and other papers. We had several discussions with the Swiss General Consul, Mr. Naef, and the Canadian Ministry in Washington. Photography being my hobby, I had taken all my equipment along and had promised to act as photographer and cameraman.

The trip, however, could not take place, as my negotiations in the Hurricane matter had failed and I had to remain in permanent reach of my offices. For this reason the three of us spent the summer in the little village of Siasconset, Nantucket Island, Massachusetts, where I had rented a small cottage of Mrs. Jerome Zerbe, the mother-in-law of Mr. Roy Larsen, president of the "Life" magazine.

4.) *My personal safety.*

The fourth and most compelling reason for my trip to the United States was my personal safety. At the time the European war was declared, every German of fighting age living in Switzerland was called to the colors. The order was several days later rescinded but I had not gone and was afraid that it had become known in Germany and that sooner or later I would be called again.

As a youth I have served in the first World War and was distinguished for bravery. I was, however, not willing to serve a second time in a cause I could not believe in, nor in any cause led by a Hitler. I knew that the refusal to return to Germany for service would establish me as a

"refractaer", an offense which in wartime carries a death sentence.

As the Nazi army seemed stalled in front of the Maginot Line, it was feared in Switzerland that Hitler might choose to occupy part of Switzerland for the purpose of outflanking the French fortifications. Mrs. von Opel particularly was rather nervous and scared, being afraid that in the run of an occupation the Nazis might get hold of me and punish me for my refusal to serve, or my other "crime", the change of citizenship. Regarding the latter, the Nazi doctrine (in sharpest contrast to the American principle recognizing the right of expatriation) regards a German eternally bound to its nation, no individual has the right to decide his own fate, and whoever chooses to emigrate for personal reasons is considered a "traitor to his nation". The American view is set forth in Revised Statutes, Section 1999:

> "Right of expatriation.—Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed; Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic."

This fear of Mrs. von Opel (I at that time felt rather downcast and resigned on account of my injury) was intensified by the following incident: the world champion figure skaters, the Germans Herber-Bayer (whom I had known for years, as they daily had practiced on the rink in front of our house) had telephoned the manager of the St. Moritz Stadion regarding an ice show and had asked him to find out whether I could accommodate them for a few days as, on account of the war, they could not obtain enough Swiss funds. Having my affirmative answer, the manager wired them that they could stay with us at any time. However, they did not arrive, and weeks later Mrs. von Opel heard that they had strict orders from the Nazis not to see me any more on account of the fact that I harbored in my house refugees and exiled people and that—after England and France were in a state of war with Germany—I nevertheless continued to have English, French, Belgian, and other "enemy" guests.

May I add that the above-mentioned reasons for my stay in the United States, namely the liquidation of Hurricane and my fear of political persecution, were already mentioned, in October, 1940, in my application for an extension of my visa.

* * * * *

Part II

Why did I become a citizen of Liechtenstein?

When I had left Germany in 1929, I was general manager of the Opel Corporation and in possession of a still valid contract by my family which gave me an income of around $50,000.00 yearly. It was the wish of General Motors, the new owner, that I should study their operations inside and outside the United States for several years and that I then should return to the management of the Opel Corporation.

However, when the time for my return came at the end of 1931, I refused. I owned at that time 10% of the outstanding stock of the Opel Corporation, a company which, before and after the acquisition by General Motors, netted twenty million marks a year, 10% of which would have given me had I chosen to return to Germany, a very considerable income. I did not, however, believe in Germany's economic stability or its political future, and for this reason I exchanged my German holdings for American ones and did not return, but took up residence in Switzerland.

My attempts to immigrate to the United States

Already at this time I thought of changing my citizenship. As the Swiss regulations require a very long residence in Switzerland, I could not become Swiss, but I could become American through immigration. I discussed this matter in the early thirties with a New York lawyer, whose name I do not recall at present but whom I can locate if necessary. He suggested that I should go to Canada, ask there for an immigration visa, and then immigrate from there to the United States. This suggestion I followed: in the summer of 1932 or 1933 I traveled by railroad to Canada, but was stopped at the border and not permitted into Canada because my American visa was good for one entry only, which already had taken place, and the Canadians did not want to take the chance that, in case my immigration visa should be refused, I could not be sent back to the United States. I returned to New York without result and paid half of the agreed fee to the lawyer ($200.00).

Shortly after this time the persecution of the German Jews began and the immigration quota was filled for years in advance. Nevertheless, in 1936, through recommendation of General Motors, I succeeded in obtaining my papers for immigration from the American General Consulate in Zuerich, Switzerland. However, when I was about to sail

for New York, I received a cable from a business associate warning me against entering American soil. The reason was that a former Wall Street broker by the name of Cole had started a suit against me in the amount of $500,000.00, and for obvious reasons I was advised not to establish legal residence in the United States before the suit was settled. I canceled my trip to New York and arranged instead a meeting with my associates and my lawyer, Kresel, in Montreal, Canada. (There too I was served a summons, but without legal consequences. The whole suit, a typical example of a nuisance suit, was, about a year later, settled for around $15,000.00).

Not having been able to immigrate as planned, my papers expired, and it was thereafter hopeless to apply for admission, as the rising persecution of the German Jews caused delays of years, the more so on account of a regulation which does not permit that visitors' visas are given to people who applied for an immigration visa. Had I applied for an immigration visa in 1937 I would have been barred from the necessary visits to the United States for a number of years. This situation still existed in 1940. In the spring of 1941 Mrs. von Opel immigrated from Cuba. I did not join her, being afraid that—pre-examination not yet possible and my papers not complete—I might get delayed in Cuba, as other people did, for an indefinite period.

. . . . . .

As I considered it impossible in 1938 to obtain a new quota number for immigration within a reasonable length of time, but wanting more than ever to drop my German citizenship, I discussed the matter with different people and learned that, in all but two countries (Panama and Haiti), naturalization could be obtained only after years of residence. One friend, Dr. Frankenberg, had become a citizen of Haiti, another friend, the exiled German writer Remarque, a citizen of Panama. We, however, hesitated

to become subjects of such remote countries, the language of which we could not speak.

I then discussed the matter with my lawyer, Dr. Henggeler, in Zurich, who told me that Switzerland could not waive its requirement of long term residence but if I should become a citizen of Liechtenstein I would be represented by Switzerland just the same. He said he was going to discuss the matter with the Liechtenstein government. This discussion took place in 1938 or early 1939, in any case long before the outbreak of the European war.

I learned from Dr. Henggeler that Liechtenstein upon the request of Switzerland was about to strictly limit naturalization but that we, who were known to the Swiss for so many years, would still be admitted if we applied immediately. I immediately filed my application through Dr. Henggeler but expressed the wish that it should not yet be put before parliament for voting but kept pending for the time being. This being agreed upon, I had reasonable time to obtain, if possible, the proper consent of the German military authorities releasing me once and for all from military duty.

I tried in three different ways to obtain this release:

1.) Dr. David Gros, attorney-at-law in Berlin, discussed the matter with the army officials in charge, but the release was denied.

2.) After the outbreak of the European war in September 1939, the matter became burning. I was—still being German—geographically trapped in Switzerland and, should the Nazis invade the country, bound to be persecuted. (See Part I #4, "My personal safety".)

Mrs. von Opel became panic-stricken and she urged me to leave no stone unturned and insisted that I at least make a try to get the assistance of the Diplomatic Service. (In the eight years I had lived in Switzerland I had never met

one single member of the German Diplomatic Service and I had seen but once, in passport matters, the Davos Consul.) Much against my better judgment, I yielded to my wife's pleading and discussed the matter with one of the secretaries of the German Ministry in Bern, Switzerland, Mr. von Bibra, either in September or October of 1939. As events subsequently proved, I should have followed my own judgment, because my negotiations with Mr. von Bibra led to such misunderstanding and misinterpretation by the British Intelligence as well as by the Swiss Alien Police. Fortunately enough, my two or three telephone conversations with Mr. von Bibra, as well as Mrs. von Opel's more frequent talks with Mrs. and Mr. von Bibra, had all been recorded and could easily be explained. I assume that it was for this reason that the British detained me temporarily in Gibraltar, but after eight days I was released, after my English friends and the Swiss Foreign Office had intervened (my immediate release took place in spite of the fact that technically my change of citizenship took place after the outbreak of war between England and Germany).

A few days after the outbreak of the war (the first days of September, 1939), I wrote a letter to the German Embassy at Bern from Zurich where we were staying with Dr. Frankenberg, and was given an appointment by telephone with Mr. von Bibra, the Secretary. A day or two later, Mrs. von Opel and I drove to Bern to keep our appointment. At first Mr. von Bibra was very curt with us because, as he told us later, he had been advised by the Consul at Davos that Mrs. von Opel was non-Aryan. Upon questioning her about her family, he learned— to his seeming delight—that Mrs. von Opel's aunt was the beloved "Aunty Enting" of whom his young wife frequently spoke, both families having been farm neighbors and the closest of friends in Mrs. von Bibra's childhood. (Indeed, later

when the von Bibras came to St. Moritz, they had a happy reunion with "Aunty Enting" at our home.) He asked us if we would take dinner at his home and we, thinking to make the most of his seeming good will, accepted. He telephoned his wife, and we spent an agreeable evening, Mrs. von Opel talking "Aunt Enting" to Mrs. von Bibra, and I presenting my problem to Mr. von Bibra.

I explained to him that I had left Germany ten years before; that my interests were all abroad; that I wasn't a Nazi, as he well knew; and that, as my accident had permanently crippled me, my release from the army would not matter anyhow. I told him frankly that I had applied for Liechtenstein citizenship and was planning to emigrate to America, but that for reasons which were fairly obvious I wanted to obtain the proper release from military service, which meant to me assurance of my and my father's safety.

In the course of the evening two things became clear: that Mrs. von Bibra felt very much attached to Mrs. von Opel, and that Mr. von Bibra, who was known as a cold-hearted official, could act very understandingly when confronted with the problems of a man whom, though of other opinion, he at least could respect. He promised to be helpful and he really tried his best, but to no avail; he could not get the release for me.

(May I add that my negotiations with Mr. von Bibra were mentioned in a letter written in December, 1941, addressed to the Maritime Commission and FBI.)

3.) I at last asked a Berlin banker, Dr. Pilder, whom I had met by chance in Zuerich and who was known to have good "connections" in official circles (to use American slang, he was known as a "fixer"), whether he could arrange the matter. He replied after some time that I could get the release if in exchange I would transfer one million dollars back to Germany (apparently to be put in the army's "war chest"). Many deals of similar or even more

corrupt kind were going on at that time—in a country which never before knew such things—(especially the extortion of money for exit permits of Jewish refugees), but I was neither willing to become a sucker nor did I see fit to suddenly reverse a financial policy of nine years' standing by exchanging a million dollars for a blocked account of doomed paper marks.

I underwent the above endeavors for two reasons. I knew that, according to the German citizenship law, I would automatically lose my German citizenship through the mere petition for another citizenship (to-wit, page 72 of Department of State Publication 1864, Government Printing Office). However, every German-born up to the age of 50 or 60 is a member of the army reserve and the law provides that these "reservists" in cases of emigration or change of citizenship have to obtain the consent of the military authorities. This consent—whether given or refused—has, of course, no bearing on the validity of the naturalization, but any offense of this regulation throws the offender open to prosecution by the German military authorities. I did not feel too safe in Switzerland after war was declared. All lines of retreat to the United States were either cut off or German-controlled, and there was even a chance of an invasion of Switzerland. A consent, which is nothing but a permanent release from the service in the army, would have safeguarded me personally.

The second reason was that I wanted to spare my father any avoidable embarrassment. His own and his brother's extremely severe punishment in 1935, the sentencing of my sister, in absentia, to a prison term in 1937 or 1938, and finally the additional losses he had suffered through the manipulations of a trusted banker, not to speak of repeated threats by the Nazis (he was ordered to the Governor's, a former mail clerk's, office just for this purpose on Christmas Eve, 1938, at the holiest hour of the year)—these and

other events had already done so much damage to his health (he was seventy years of age) that I wanted to spare him any new excitement. I was sure that the Nazis would not harm him bodily, but I felt that even "a war of nerves" was already too much for him. As much as I hate crooked ways, I must admit that I was ready to bribe, either by paying cash or even by giving a "good time" to any official, if I thus could arrange the "consent" and safeguard my father and myself. I am convinced that any other responsible person in my place, having to deal with Nazis, would not have acted differently.

After the above described efforts for my release had failed, I immediately asked the Parliament of Liechtenstein to act upon my pending application, if possible in a secret session. I wanted to avoid any publicity before I had left Switzerland and had passed through Italy.

My naturalization in Liechtenstein became generally known through newspaper and radio reports about my detention in Gibraltar (April, 1940). At what prior time my naturalization was reported to the German ministry I do not know. I am, however, certain that no report reached Berlin before I had left Switzerland and was out of the reach of the Italian agents of the Gestapo.

This was due to the generosity of Mr. von Bibra who had risked his career by delaying the report. He did it—and both of us shall always consider it a very gentlemanlike act—upon the fervent pleading of Mrs. von Opel who was haunted by the fear that I would get arrested by the Gestapo either in Italy or Spain. This unselfish act (he had everything to lose and nothing to gain by it) was never mentioned between him and me but I felt, when I left Europe, I should tell him that I was aware of and deeply appreciated his fairness. When I said goodbye to him over the telephone I felt it was a goodbye forever, spoken to a man who—had not a Hitler broken the world apart and distorted the human souls—would have been an asset to

his country. (When I said he risked his career I meant it literally: Mrs. von Opel received last year a letter from a friend mentioning that Mr. von Bibra got severely reprimanded for having "helped us without the consent of his superiors".)

It always seemed strange to us that a diplomat of the "Third Reich" acted in such a manner. We—for years—searched our souls for an explanation, not for the purpose of analyzing this single incident but to find the key to the heart of the German aristocracy. True that he was deeply fond of Mrs. von Opel and her idealistic outlook on life, true that he liked her sense of humor with which she bridged even the unbridgeable. But above all, though he never admitted it with a single gesture, I am convinced that subconsciously he realized that ours was the side of the fence on which he also belonged—though for different reasons—and in helping us he did for others what he himself would have liked to do.

He, as a member of one of the oldest aristocratic families (nobilitated by Charlemagne in the 8th century and still living in the same thousand years old castle), felt, I guess, the instinctive inborn antagonism of a nobleman towards a Hitler, of not only low but dubious parentage, of a gentleman (at least in the sphere of his private life) towards a crook, the mental reserve of an educated man towards the cheap generalities of a rabble-rouser, and last but not least, the antagonism of the frustrated and disinherited ones towards the man in power.

The reactionary class in Germany (largely represented among diplomats, high officers and landowners) will never be able to find an excuse for its Frankenstein act (creating the monster Hitler for opportunistic reasons); but nevertheless it is upon the awakening of their dormant hatred for Hitler that the chance of the world for a short war is resting. The German revolution will be carried out but not started by the enslaved working classes: the first shot

will be fired by a member of the above-described reactionary class and at the exact moment when this class realizes that the hope for final victory has definitely gone. It seems that Hitler tries to forestall such a development by replacing leading officers and diplomats by the dozen, even if he has but inexperienced party men to replace the experts, this dilemma being the grip of fate which ultimately is going to strangle Hitler.

* * * * *

The moral reasons for my change of citizenship I have already touched upon. The practical reasons were fourfold, one as urgent as the other:

1.) *Economical reasons.*

When I had decided not to return to Germany in 1932, I immediately felt that I should arrange my citizenship. The reason was that I did not feel safe economically as a subject of Germany. In one case already a retroactive law had been issued (summer, 1931) which tried to force emigrated people and emigrated capital back into Germany. I deemed it wiser to safeguard myself against such developments and I tried, naturally, (in 1932 and 1936) to immigrate to the United States, the country to which I was bound mentally and economically.

2.) *Political reasons.*

Politically the reasons were not less urgent. I felt that by surrendering my citizenship and becoming a citizen of another country I would be spared any contact with Nazi officials in passport matters and I would be protected against all undue demands.

There is no better witness for this state of affairs than the Department of State, which, in a publication on fifth column activities, writes as follows:

"Now to be a German citizen and to be known to the Nazis is to be in power of the Nazis. So long as you do not surrender your nationality, the Buttings (id est, a resident Nazi leader in a foreign country) are able to coerce or blackmail or bribe you into doing their bidding. They can break you or they can induct you into the Party—exactly as these vest-pocket Robespierres choose. That you happen to reside outside Germany makes no difference. You are their man . . ."

How true this statement is I learned for myself when my passport had expired and I was refused an extension by the German Consul in Davos, Switzerland. Only after a "voluntary" donation for "welfare" work was a new passport issued to me.

A similar incident happened to my wife. She was told by the same consul that—on account of her Jewish sounding name—he would not extend her passport unless she would bring an "Ariernachweis", a document showing that the parents as well as the grandparents of the applicant are non-Jewish but fullblooded "Aryans". This document can only be obtained from some office affiliated with the Nazi party (Rasseamt: i.e., office of racial documents). This requirement was one of the many means to investigate people and to keep track of the Germans in foreign countries. Mrs. von Opel, who was not willing to apply for such a rigamarole, was facing the fact that, beginning February, 1940, she would be without a proper passport.

3.) *Only as a citizen of a neutral country could I pass the British blockade.*

As explained in Part I, I had to go to the United States for personal and business reasons. There were but two

ways open: I could either travel through France and take a Portuguese steamer, or I could take an Italian steamer and travel past Gibraltar. No German citizen could use either way, because France and England were at war with Germany and permitted passage only to Jewish refugees with a "J" passport or other identification by Jewish organizations. This made it imperative for me to become a citizen of a neutral country.

In spite of my naturalization in Liechtenstein, I was detained by the British authorities in Gibraltar, but immediately released after the Swiss Foreign Office and our friends in England had intervened in London and my political status as well as my status as a Liechtenstein citizen had been clearly established. My release took place even though I had become a subject of Liechtenstein *after* the declaration of war between England and Germany.

4.) *Visas to the United States were not Obtainable on German passports.*

We were informed that the American General Consul in Zuerich, Switzerland, refused to issue visas on German passports. I do not know, however, whether he acted this way under general instructions from the Department of State; but the fact is that numerous people could not obtain visas on regular German passports. Even after we personally had received our visas as Liechtenstein citizens, we were refused the visa for my wife's only living relative, an aged aunt, who had lived in Italy for fifteen years but who still was a German citizen.

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PART III

Who are our friends abroad?
Are Nazis among them?

In our hearing we were asked whether we know any "Nazis". We both have lived in Germany close to thirty years, and it is natural that Mrs. von Opel during her former connection with the stage met many people, particularly artists, as well as that I met hundreds of businessmen, the majority of them being our suppliers or dealers. However, since we had left Germany in 1929, we met only a very limited number of people and particularly few Germans. I do not mix easily with people. I loathe society and its shallow doings. I hate big parties or public places. I do not even possess a tailcoat or even a starched collar, the requisites of a social life. In addition, my hearing is hereditarily impaired insofar as I am unable to perceive a conversation in noisy surroundings. I am not a hermit but, being able to visit with the greatest minds of all times through the medium of their writing or art and meeting them in such way in their very best and concentrated form, I believe—and I always acted accordingly—that gatherings of human beings should be limited to the sole purpose of creative discussions.

If it were not for Mrs. von Opel, who takes a lively interest in human beings, particularly in artists (a friend called her once a "collector of crackpots"), I would hardly know anybody except business associates or sportsmen. For this reason it happens that every single person named below (with the exception of the banker, Dr. Frankenberg, and Ernst Udet) was first known to Mrs. von Opel and without exception invited to our house by her.

I have no friends at all in Germany and even Mrs. von Opel had but six people she had any amount of contact with: a former actress who is now an interior decorator

(she decorated our house in St. Moritz), her dress designer, and his wife, a well-known musician and his Jewish wife, and her best friend, a writer and philosopher. None of these people is either a party member or a sympathizer of the Nazis, but, as everybody else, they have to keep their mouths shut; in their few letters to Mrs. von Opel they could only by the help of hidden meanings hint their dislike of the happenings of the political scene.

The names of these people I omit, as they are apparently of no interest. However, in the hearing we were asked about three people who at some time or the other were in the limelight. They are:

1.) In 1921 I met in motorcycle races as competitor the former war ace, Ernst Udet. As he had the same hobbies as I: racing, flying and skiing, I saw him occasionally at competitions.

After I had left Germany in 1929, I saw him again in St. Moritz, where he made additional shots for a movie he and Leni Riefenstahl had begun in Greenland. He took me for a mountain flight, dropping me on skiis on one of the neighboring mountains, and I invited him as a house-guest twice between 1931 and 1934. He at that time made a lot of money through his movies and stunt flying, and he was for all purposes an amiable kind of carefree bohemian.

Around 1935 the German air corps offered him the position of Inspector-General. To our all surprise he accepted, but he soon regretted it. He was not allowed to fly any more but was forced to sit in an office and do paper work which he hated. To make matters worse, he felt trapped as a tool of a system which was in contradiction to his very nature.

About Udet's feelings towards Nazism there is no better witness than Martha Dodd, daughter of the American Ambassador to Germany, who writes about him enthusiastically in her book, "Through Embassy Eyes" (pages 261-266). She speaks there about "his love for everything

American", his "international spirit", and concludes: "Though he never admitted it, I thought Udet was miserable the last two years (1936-1937) in Germany."

That is exactly right. His personal freedom was gone, his whole life was censored, and he could not even dare to be seen in public with many of his former friends nor to invite them to his own flat as always before. Once more, however, in 1938, he wanted to see us and he arranged a dinner among the four of us in his girl friend's apartment. We shall never forget this evening. He seemed rather depressed and so, to cheer him up, we spoke to him about the many humorous adventures we had together, addressing him by his old former nickname, "Wolkenvogel" (Bird of the Clouds), and he, the general, the war ace, the daredevil, he began to cry like a child, suffering a complete nervous breakdown. He knew he could trust us, and we never again heard such an outcry against Nazism, such a revolt of a liberty-loving individual against a merciless system which had put him in chains. We were sad when we parted. We felt that he was doomed. And when a year ago the news did come about his accidental death, we did not believe it. We know for sure that he ended by suicide, his only way out of a dead-end street.

2.) We both knew superficially, for about fifteen years, the dancer and actress, Leni Riefenstahl. Most of her movies were made in Switzerland where she used to live the better part of the year, particularly in wintertime. She always had three or four of the best Australian or Swiss skiers around her, and in my capacity as organizer of ski races for the international St. Moritz Sport and Skiing Club I invited this group twice to compete in our events. As these skiers are notoriously broke, it is a habit with all clubs and at all places to arrange with club-members or local people for their lodging. Twice, in the years between 1934 and 1938, Miss Riefenstahl and two or three of her

friends have been our houseguests, both times for the duration of international competitions, that is less than a week.

Miss Riefenstahl was not a party member, and she was not at all interested in politics. She was, however, an ardent admirer of Hitler's personality, to whom she looked up as a kind of deity. Many people consider her as an opportunist because she has made a small fortune by the direction of the movie of the Olympic Games. We do not share this view. We consider her as the purest example of a fanatic whose belief knows no reasoning. There was no chance to argue with her. Hitler was always right by the power of "divine intuition," even if we mortals could not fathom his genious. That he did not see the vices and crimes committed by his closest associates was due to the fact that "he is so pure and innocent." The reports about cruelties in concentration camps could only be lies for the simple reason that "Hitler in his sence of justice would not allow it."

Miss Riefenstahl was a case of prepossession, not even rare among women. The British girl, Unity Midford, is another example, and we met even an American (the lady mentioned in Mr. O'Connor's affidavit) who was to the same extent in the spell of Hitler.

Apart from this peculiar frame of mind, we both liked her. We would not call her a friend, both being on the stiff "Sie" term with her, but she was without doubt a gifted artist, a beautiful woman, and, above all, as crazy and daring in skiing as I. She was the only woman, expert and courageous enough, to blindly follow me whatever difficult track I chose. She was in the best sense of the word, a "good sport," and we thought of one another: too bad that such a nice person must harbor such crazy views, but time and events will certainly bring out a cure.

In the summer of 1936, apparently in exchange for our hospitality, Miss Riefenstahl asked Mrs. von Opel whether she would care to stop on her way to St. Moritz in Nurem-

berg for a day or two. Miss Riefenstahl was there to make some additional shots for the movie on the Olympic Games at the occasion of sporting events which took place in connection with the yearly party gathering. Mrs. von Opel did not want to go, but I convinced her that it was worthwhile to study this famous mass meeting which year after year had attracted hundreds of diplomats and distinguished foreigners. For a private person it was impossible to be admitted, but under Miss Riefenstahl's guidance there was a first-class chance to watch from close quarters all the bigwigs and their antics.

Mrs. von Opel went there for two days. The first evening while Miss Riefenstahl and Mrs. von Opel, together with a cameraman, were taking their supper in the large dining-room of the hotel "Deutsches Haus," Hitler and a dozen of his men had theirs at a corner table reserved for them. After a while Hitler saw Miss Riefenstahl and his officer-in-charge came over and said, wanting to be funny: "By order of the Fuehrer you are arrested." He conveyed both of them to Hitler's table where Miss Riefenstahl introduced Mrs. von Opel. Hitler had apparently mistaken her for an actress friend of Miss Riefenstahl, and upon hearing the name Opel and seeing her lipstick and red fingernails he turned abruptly around and did not speak to her at all. (Even more significant for the warrior manners of the Third Reich is the fact that Mrs. von Opel was not allowed to drink the wine and water she had ordered. "At the Fuehrer's table there is no alcohol permitted," and that, with the exception of Hitler himself, nobody got up from his seat when the ladies arrived.)

Shortly thereafter it became clear why Miss Riefenstahl had been particularly interested to see Mrs. von Opel. She was terribly in love with an American Olympic champion and, not being able to write English fluently enough, she asked Mrs. von Opel to compose a love-letter. From time to time it has been rumored that Miss Riefenstahl was

"Hitler's girlfriend". The same questionable honor has been conferred upon Unity Midford. Aside from whatever doubts there may be as to the Fuehrer's predilection for women, Miss Riefenstahl would have followed her Olympic hero here at a moment's notice had he seen fit to encourage her.

3.) Dr. Rudolf Diels was an official of the former Prussian government, in charge of the state police. Being an expert in police matters, he was continued in service for one more year. Mrs. von Opel met him in 1933. He was at that time the most intimate friend of Martha Dodd, the American Ambassador's daughter, who writes about him extensively in her book, "Through Embassy Eyes". She says there: "the third most unusual German I met with any degree of friendly intimacy"; she calls him an "opportunist", and concludes: "I am also equally convinced that he was and is no more of a Nazi than many of the others who give lip service to Nazism for their personal and political reasons". Be that as it may, the chief of the German police got rather drunk when Mrs. von Opel met him for the first time, and it really was "unusual" that he immediately began to abuse—to Mrs. von Opel's surprise and delight—the whole Nazi system, particularly its "big shots". Nervously shaking, he confessed that he had not known what he was up against when he "joined the gang", that he could not stand it any more; and that he wanted to quit if he could only find a way out.

Such open outbursts must have happened quite frequently. Miss Dodd describes several of them. She writes: "he became more neurotic and full of obsessions than anyone I knew in Germany . . . he felt he was constantly facing the muzzle of a gun", and at other places she says: "he was like a frightened rabbit . . . in fear of imminent assassination . . . because he knew too much." I venture to say it was less his knowledge than the fact that he could not hold it which got him into trouble. It was

almost a miracle that he escaped the bloodpurge and, though one must take whatever he says with a grain of salt, I am inclined to believe that only his connections with the American Embassy helped him through the crisis.

(When Mrs. von Opel visited Miss Dodd in 1941 in her country home in Connecticut, she was not at all pleased to be reminded of this and similar happenings, having married in the meantime the rather pinkish Mr. Stern.)

Dr. Diels was dismissed several months before the bloodpurge and given an administrative position, first in Cologne, later in Hanover. He subsequently resigned and returned to private employment in the industry.

He is not at all a friend, not even a close acquaintance of us. We are not on "Du" (thou) terms with him, as used among friends, but on the conventional "Sie", I even addressing him as "Doctor Diels" which is rather formal among social equals. He came to our house, the first and only time, in the winter of 1936. He had come to Switzerland for his vacation, and asked Mrs. von Opel by telephone whether he could come to see us. He had bought a rare kind of falcon and wanted her to take care of the bird for a few days. (It is this falcon the FBI took so much interest in). He himself arrived three or four days later and spent less than a week with us. Our houseguests at the same time were the Spanish tennis star and skier, Lily Alvarez, and the Belgian Countess de Changy with her two children. I saw Dr. Diels only once more for any length of time, when he came for a couple of days to the Isle of Sylt to train a young hawk. He was not our guest, but Mrs. von Opel kept his hawk for about a week.

(For the sake of completeness, I should not forget to mention that I know two or three of the really leading Nazis, namely, Minister of Justice Kerrl, Secretary of Justice Freissler, and Secretary of State Koerner. These gentlemen conducted the procedure against my father and uncle and cross-examined me as a witness. Neither of

them I saw again after the "shakedown" in 1935. As to my feelings for them, I can only say I hope to be present when they are strung to their lampposts.)

* * * * * *

After having discussed our Nazi "friends", I believe that for the sake of fair judgment I should be allowed to point out who, in fact, our friends are, people who knew us numerous years from Europe, people who lived with us for years and who were in daily contact with us.

1.) During the last years Dr. Hanns Frankenberg became our most intimate friend. He was born in Austria of Jewish parentage and is now a citizen of Haiti. He was my business associate for the last ten or twelve years, and since the outbreak of the European war we practically lived together. He sailed over together with Mrs. von Opel and Mrs. Schwarzenbach, and there were few days in Switzerland or in this country when we did not see each other, telephone, or at least correspond. He is a man of extreme culture with a rare sense of humor and fond of all things we like. Does it seem feasible that this man who knows me and my family since twenty years, who knows my business, my hobbies, my talents and my weaknesses almost better than I do, that he has not a clear picture about me and my views? Would he befriend a man with barbarian concepts, a man who is not fair and liberal as he himself?

2.) Another friend from abroad is Erich Maria Remarque, author of "All Quiet on the Western Front". He, the first German writer attacked by the Nazis and subsequently expatriated, would he seek our company and live with us for months at a time if he did not consider us congenial? Would we, in turn, if we sympathized with Nazi views, harbor an exiled enemy of them?

3.) The anti-fascistic writer, Annemarie Clarac-Schwarzenbach, I have already mentioned in Part I. Suffice it to say that she, a person of the utmost sensitiveness, certainly would not have borne for years the atmosphere of even faint fascism.

4.) The novelist, Hermann Kesser, delegate of Switzerland to the P.E.N. Club conference at the World's Fair, knows Mrs. von Opel closely since 1923 and me since 1929. He, another liberal writer, distinguished by none less than President Masaryk of Czechoslavakia, was our house-guest in St. Moritz and over here. I venture to say that Dr. Kesser in his capacity as psychologist should certainly possess a more than average insight into his friends.

5.) Mrs. von Opel's very close friend, the friendship inspired through their mutual love for dogs and horses, is Mrs. Alice Barschall, a British subject of Jewish parentage, born in India and now living in London. Mrs. Barschall, once very rich, lost her fortune and was running a riding academy in Berlin. Her friends were exclusively British and American people, mostly diplomats, among them the now Egyptian Ambassador in London, Machat Pacha.

6.) There is Prince Friedrich von Preussen, grandson of the former Emperor Wilhelm II. He spent the decisive years of his life, winter for winter, in St. Moritz in our house. We freed him from his prejudice, we taught him to see the shortcomings of his family and the reactionary circle around them and, above all, he learned to understand the utter stupidity of nationalistic concepts. He was to both of us like a younger brother, and he had and still has the same feelings towards us.

He once told us that his father wanted him to enter the German diplomatic service under Ribbentrop. We told him bluntly that we considered his father's flirting with

the Nazis as disgraceful and undignified and that he as a decent person should not—by becoming a German diplomat—join hands with "criminals". In a letter, seized by the FBI but never used in our favor, he reminded us of this discussion and how happy he now is (after the beginning of the war) that he has followed our advice and not joined "those criminals".

We had further advised him to go to England and enter into a business career. He did so. About his feelings and his character, I need not say more than that he, the Prussian prince, remained in England after being called to the colors and, after a short internment in Canada, voluntarily returned to England as a war worker on a farm. It was a hard decision for a patriotic Prussian prince to make. He wrote us that he was feeling happy again after he had learned that we both understood and agreed with his action.

7.) The writer and publisher, Armin Robinson and his wife became our close friends during the last years. He is Hungarian and partly Jewish; she is German. They do not only know us and most of our friends abroad, they also have been our houseguests in Siasconset and Palm Beach.

We pay the highest tribute to Mr. Robinson's friendship and courage. He remained with us through all the trying months of our detention in Miami. We are proud to have a friend, alien in this country as we are, who has the courage to stick to his convictions and not to let down his friends in whose integrity he believes.

I remember when Mrs. von Opel discussed with him in Palm Beach—a few nights before our arrest—the detrimental effect of the Nazi ideology on the basic Christian principles (she calls such talks her "soap box speeches"). I guess it was this discussion which made Mr. Robinson conceive the marvellous idea of his book and movie, "Hitler and the Ten Comandments", which he is at present pre-

paring under the sponsorship of the Office of War Information.

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PART IV

Our trips to Germany

At our hearing we already stated that we both have been on visits in Germany after we had left in 1929. Not many details were asked, but I feel that a thorough discussion may be helpful.

As Mrs. von Opel and I went there for different reasons, I have to discuss our trips separately. One reason, however, we had in common: we were both strangely attracted by the rising monster Nazism, which kept us spellbound, half in fright, half in curiosity. From the first minute our judgment of Hitler had not to be altered: we knew he was the ruin of everything dear to us. The Austrian pied-piper's march through Germany and "the nation of poets and thinkers" falling in line behind him will for all time be regarded as one of the strangest mental phenomenons. This—our experience gathered inside of Germany (and, strange to say, topped by our Seagoville experiences)—gives us such an insight into the powers which motivate Nazism that we hope for an opportunity to put our knowledge to work in a broad scale attack of this mental disease.

a) *Mrs. von Opel's trips.*

We had left in Germany a bank account of so-called "Auswanderer-Mark" (emigrant marks), a blocked account which was not transferable into foreign currency and practically worthless. However, as the democratic government wanted to stimulate visits by foreigners, there was a provision that such funds could be freely used inside the country.

At different occasions, mainly while I was in the United States on business, Mrs. von Opel went to Berlin to do her shopping, especially for clothes, which she thus could acquire very cheaply. She also went there for medical treatment of a leg fracture and several times for a vacation on the Island of Sylt which she likes very much. (An article in "Fortune" in 1940 said, correctly, that we wanted to settle on Nantucket Island because it is so much like Sylt.)

b) *Mr. von Opel's trips.*

All my trips (with the exception of the treatment of a dislocated shoulder and a compound leg fracture) were prompted by my father and mainly by business troubles he had run into.

Since my marriage in 1929, my father is the only member of my family with whom we are on good terms. After the sale of our factory to General Motors he felt very unhappy. He was a genius in mechanics and manufacturing, a go-getter type of businessman who had known nothing but his work. All of a sudden he found himself retired to a life he was not used to and—widely inexperienced in the tricks of banking and investing—he fell prey to all kinds of people whom he considered his friends. It was a heartbreaking experience for me to see a man whom I considered one of the best brains in his profession caught in the nets of the cheapest tricksters.

In 1931 he had given me the fair half of his fortune and I felt obliged to assist him in the defense of his own interests in a world, quickly changing, he did not understand any more. The former law and order was gone, and he felt puzzled by political and economic ideas he had no use for. He did not see clearly that the Germany he had cherished was gone for good, and though he felt on himself the blows of unlawfulness and distorted justice, he steadfastly believed that all of a sudden the nightmare would make room for the rebirth of a decent Germany.

I assisted him mainly in the following matters:

1.) Before Hitler had come to power my father, who at all times was the target of inventors, had the idea to finance inventors and to make their inventions ready for sale on an international basis. I had agreed to assist him, particularly in arranging the sales of patent rights in foreign countries. My father soon discovered that it was no fun at all to deal with inventors and moreover, after Hitler had come to power, the restrictions got such that any cooperation on an international basis became impossible. Furthermore, one of the key men, the chemist, Dr. Eduard Holzapfel, who had worked on the development of a cure for hookworm disease, wanted to immigrate to the United States. For this reason, in 1934 or 1935 the small organization was discontinued and all the inventors —among them, myself—regained their rights. Those rights I still hold, mainly several patents in automatic traffic control.

2.) The worst trouble my father ran into was, one year after the Nazis had come into power, the claim, unsustained by any law or regulation, that he, by giving me half his fortune, had broken certain restrictions regarding foreign currency. I already mentioned this matter which lasted from the summer of 1934 to the summer of 1935. My father's and his brother's position was legally unattackable, but they were told they would not be tried before the bench but before a newly-formed "people's court" for "economic treason". Thus they were forced to surrender to a fine of eight million marks (about three million dollars). I was the chief witness for my father and was repeatedly cross-examined by different authorities.

3.) Another trouble was that my father had made several large deals with a banker by the name of Deku whom he fully trusted. I disliked this man thoroughly but I could not convince my father that he was a crook. It

nearly came to a complete break-up between my father and me. He was ready to sign a contract which would have completely ruined him financially when I intervened and had the banker arrested. I was the principal witness for the prosecution. The banker was convicted of numerous charges of theft, embezzlement and forgery and was sentenced to three and a half years of hard labor. My father's losses amounted to more than four million marks.

4.) In connection with the above conviction of the banker, his bank, the Union Bank A. G., went in bankruptcy. Other creditors claimed that my father had unnecessarily brought about the bankruptcy and was liable for damages. He was sued to the tune of several million marks, mainly by the City of Dresden. When I heard of it last, in 1941, the matter was still unsettled.

5.) On my insistent advice that nothing but real estate would survive a possible war and the collapse of the Nazi "economics", my father had acquired a large forest. While the transfer of the property was pending, a quite unusual "twister" destroyed about one-eighth of the timber. On my advice, my father sued for damages and I assisted the lawyers, who were quite inexperienced in forestry matters, in establishing the claim. The defendant appealed already twice and in 1940 I was cross-examined by the defendant's lawyers in New York.

The lawyer of my father is Dr. Daniel Gros in Berlin. Whenever possible I had him come to St. Moritz for our conferences, but I also conferred with him in Berlin, on the Isle of Sylt, and on the damaged estate of my father.

After Hitler had come to power, new regulations came out with regard to the establishment of residence in Germany. This was extremely important for all people who had foreign holdings because, according to the German "foreign currency" restrictions, everybody residing in Germany, Germans or foreign nationals alike, had to surren-

der their foreign holdings. According to the new regulation, the mere "intention to establish a residence" (for instance, the renting of other than furnished rooms, hiring of servants, the regular reception of mail or any prolonged stay at all) was considered sufficient "evidence of residence" to force a foreign resident into submission.

Having emigrated in 1929, I was considered a "Devisen-Auslaender" (unrestricted resident of a foreign country), which meant an invaluable asset. (Even the retroactive law of 1931 had not caught up with my date of emigration.) If the Nazis could construe me a resident under the rubber-band regulations (offenses were punishable by death), I would have been forced to surrender all my American investments. For this reason I was most careful to limit my stays in Germany after 1934 to the utmost.

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PART V

Can I be an agent of Hitler?

I do not believe that anybody who has even superficially studied the foregoing pages will still be inclined to believe that people of our standards, our mode of life, our interests, and—not to forget—our independence, mentally and economically, offer the material spies or agents are made of.

However, there is a tendency to accept certain theories to the very detriment even of those refugees who have already suffered most from Hitler. Against the preposterous wholesale assumption that all those who have relatives left in Germany are likely to act for Hitler in one or the other sinister capacity, there is no better way than to look at each single case individually.

My own life is a living denial of this assertion: not only by, in 1929, my marrying against the wishes of my family the most liberal-minded person, by emigrating from Germany in the same year, by settling in a neutral country,

by choosing my friends exclusively among outspoken anti-Nazis, not only that the Nazis issued a warrant of arrest against me, not only that they fined my family three million dollars, not only that I invested all I had in this very country, not only that wherever we went, awake or dreaming, we criticized and condemned the Nazis, not only that I worked constructively in this country's industry for ten years, that I put up a defense plant and offered several valuable inventions of mine to this Government—no, far more: that I never said or did a single thing to help the Nazis or to harm this country.

What can a person who is not accused of anything, but merely suspected (in a case where even this suspicion cannot be based on any evidence and runs counter to all logic and reasoning)—what can such a person do to destroy such a suspicion?

1.) Would it help to analyze the matter from the philosophical viewpoint? Would it help to show that my wife and her family, and I and my family, always have been liberal? Would it help to show that not one independent man in this world, with the same background and the same training in science that I had, ever succumbed to Nazi doctrines, to their pseudo-science, their surrogate for ethics and their blasphemies?

I am rather proud of the fact that I was right in my judgment of human character when I stated, as early as 1928 or 1929, that out of Hitler's ugly and maniacal face nothing could come for Germany but the destruction of all moral and spiritual values.

2.) I believe it is better to approach the matter from a more materialistic point of view: Every agent in the world expects some reward for his endeavors. What could be the reward in my case?

a) *Money?* As I was independent and as I earned more than I needed, it seems safe to assume that no financial compensation could ever have tempted me.

b) *Position?* Nor could the promise of position ever have tempted me. I could have returned to Germany into highly paid positions in industry. I refused to return. My independence is my most cherished property.

I could have joined Hitler in 1928 or 1929 at a time when his cause—at least on the surface—looked patriotic and idealistic, at a time when I had my own economic interests to defend in Germany, at a time when, through my position in industry and my popularity, I would have been an invaluable asset to Hitler who would have readily given me any position just for my asking.

Does it look reasonable that I should join him belatedly, after his hands had become bloody with murder and after he had completely destroyed whatever was dear to me in Germany? What in the world could have caused me to give up my personal security and the work of my choosing to become one of the agents of Hitler, whose heads, inside and outside of Germany, are in constant danger?

c) *Fame and adventure?* Could fame and the lust for adventure tempt me? When I was young all the fame anybody could wish was showered upon me. Years of daredeviltry had established me as a sports hero, but I was not yet twenty-seven years old when I began to realize the emptiness of the public's hero worship. In spite of many triumphs still to harvest, I retired from the arena of sports and devoted myself entirely to industrial work.

Would I consider, fifteen years later, the sullen activities of an agent as adventurous? It might look so to some, but to me, who had risked my life in hundreds of races and dozens of silly stunts, it could only look dreary.

And the fame? Could Mr. Hitler's patting me on the shoulder compensate me for the loss of esteem of all my friends?

d) *Coercion?* Could the fact that my parents still live in Germany be used by the Nazis to force me to cooperate with Hitler?

It is a widespread belief that the Nazis use hostages for the purpose of forcing their relatives into subversive activities. I am convinced—plausible as it may sound in a movie thriller—that this theory is not at all borne out by the facts. The Nazis have an ample supply of genuine followers, educated and trained in blind obedience to Hitler, who would gladly undertake any daring task. The Nazis have no need to employ unwilling tools where they have volunteers in abundance; tools they never could be sure of.

In my own case, I firmly believe that since the war began my father is safer than before. It would not help the Nazis in their proclaimed "war-time unity" to harm an old and widely known man who is well liked by some twenty or thirty thousand workmen. The Nazis too have to consider the feelings of such a large body of people and it was obviously for this reason that they reversed the treatment of my father: they, all of a sudden, upon the occasion of his seventieth birthday, gave to him, the ransacked "economic traitor", some kind of a medal.

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PART VI

Are we Nazi sympathizers?

If Americans would be asked: what have you done five, ten, or fifteen years ago to show your displeasure with Hitler and his methods, I believe most of them would be at a loss to point out one single instance. It is the same with many people in Europe: the average human being does not display political feelings. This is left to politicians and political writers. The case of people who have relatives living under Hitler's heel is still more difficult.

Why should they—for no useful purpose—endanger their relatives?

In spite of my own and my father's precarious position, we are fortunate enough to be able to claim that we talked and acted against Hitler, not on this safe side of the ocean only but even inside Germany where it was risky. There is, of course, no chance to get statements out of Germany, but, fortunately for us, several people who used to live in Germany do now live in England or over here, and will certainly testify to the facts and incidents described below.

* * * * *

1.) No member of the large Opel family since the foundation of the German Reich in 1871 was

a) a professional soldier or officer

b) a government official in any capacity whatever

c) engaged in politics or

d) a member of any political party (with the exception of my father who was a "passive" (contributing) member of Stresemann's, the "great liberals" German People Party.)

2.) I did not become an officer but, upon my father's wish, remained a non-commissioned officer in World War I, which was for a man of college education very unusual.

3.) It was not less unusual that at my university I did not join a fraternity (which were all reactionary) but founded and managed for years educational courses for workmen.

4.) The members of the Opel family, on account of their liberal leanings, were nicknamed "Die roten Fabrikanten" ("the red industrialists"). We were among the first to

establish a workmen's council and to put to work all kinds of social measures.

My grandfather got his technical education in France; my father worked in the United States for Singer Sewing Machine; I went over Europe and through the United States to study manufacturing. Our market was the world, and I always lived in an atmosphere of international cooperation and exchange, an air deadly to the bacillus of chauvinism.

5.) The first socialistic president of the German Republic, Friedrich Ebert, distinguished me by personally coming to congratulate me on my record-shattering victory in the first automobile race after the revolution (to-wit: picture of Friedrich Ebert and myself on the front page of the "Berliner Illustrierte Zeitung", September 25th, 1921, New York Public Library).

I was the first German sportsman to compete in France after World War I, thereby displaying for the first time the republican colors. Having won both prizes (of the Secretary of the Navy and the City of Paris), I was welcomed by several Ministers; I replied in my speech that the change which had taken place in Germany could not be better illustrated than by the fact that I as an industrialist had come to present the colors of the new republican Germany and that the "new Germany" was eager to fully cooperate with France.

6.) In 1928 over a national hook-up I spoke from Berlin demonstrating the principle of rocket-propulsion. Here again I put emphasis on the necessity of international cooperation and the influence which faster and better communication should have on the mutual understanding among nations.

7.) About the same time a leading German newspaper inquired from dozens of well-known people whether or not Germany could pay the contributions of the Young

plan. This was categorically denied by everybody for obvious "patriotic" reasons. I was the only one who answered in the affirmative, stating that Germany could meet its obligations through the export of goods. The paper was so ashamed about this answer—correct as it proved to be—that my answer was put in an inconspicuous corner and printed in smaller type.

8.) In 1928 the former Kaiser Wilhelm, twice by wire and letter, invited me to come to Doorn for a lecture on some of my inventions. I bluntly refused to see him, in spite of the fact that the majority of Germans and quite a number of foreigners would have felt deeply honored.

9.) In 1928 or 1929 (after the death of Stresemann) the German People's Party dissolved and my father, who did not want to join the influential "German Nationals" (a reactionary movement), asked me to find out whether he should join the newly rising "National Socialistic Party". I heard several speeches of Hitler and attended a private gathering of industrialists where the then famous Gottfried Feder made a speech. I reported to my father: "If those fools and cheap comedians ever come to power, Germany is bound to smash on the rocks." (More than ten years later my father reminded me of these words, saying: "If I would have joined them it would have spared me a lot of troubles and difficulties." I replied: "One day you will be proud to have kept out of it", these being about the last words we exchanged at the train station in Zuerich at my departure for the United States in April, 1940.)

10.) My father sponsored a monument for the late Dr. Stresemann who through his cooperation with the French returned order to the Rhineland. This monument was some years later destroyed by the Nazis, who considered Stresemann's peaceful endeavors as treacherous.

11.) In the spring of 1930, while working in the Chevrolet plant in Flint, Michigan, I was invited by the German-born workmen of the Chevrolet, Buick and Fisher plants to address them at a gathering.

At this time most German-Americans felt still attached to the old imperial colors (black-white-red) and disliked the new black-red-gold republican colors. The tenor of my speech was to point out the political and economical difficulties the German republic was confronted with and to show the astounding headway the republican Germany had made in ten difficult years.

12.) It is well known that the Nazi movement was subsidized by several industrialists, particularly Mr. Thiessen. I take pleasure to state that the Opel Corporation, as long as it was under my family's control, never made one single contribution, small or large, to the Nazi party or its affiliates. Likewise, no member of the Opel family ever became a member of the Nazi party.

13.) In the summer of 1934, after the "bloodpurge" (which included the murder of Roehm and General Schleicher), we succeeded in getting tickets to the "Kroll Opera House", where Hitler was about to address the Reichstag.

The whole diplomatic corps (if I remember correctly, with the exception of the American and the French Ambassadors) was present, being seated in the center loges on the second floor gallery. Mrs. von Opel and I had two front seats on the same gallery about fifty feet to the right of the diplomats. When our friend, the Egyptian Minister Nachat Pacha (now Ambassador to the Court of St. James), took his seat we nodded to him.

At about this time Hitler entered and made his speech which I am sure history will classify as the most shameless of them all, excusing the wholesale murder of friends and foes alike with the vilest lies. At the end of the speech the whole house, deputies as well as visitors, jumped to

their feet in a roaring ovation, and with hands raised in the Hitler salute burst into the two national anthems.

We alone in the midst of thousands of people were standing in the front row, visible to everybody, not singing and with the arms down. The next day I drove Mrs. von Opel to the Grunewald to visit her friend Mrs. Barschall. Minister Nachat Pacha was there and he, who had observed us on the gallery, reproved us and admonished us not to endanger ourselves by senseless demonstrations. I replied that I would rather die than, by raising my arm, actively underwrite crimes which put a whole nation on sub-barbarian standards.

It must have been this or a similar incident which prompted Mrs. Barschall to write about us in her affidavit: "I was always worried for their safety because of my knowledge of their anti-Nazi attitude."

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15.) My father never worked with so-called "private" banks but exclusively with the big "Disconto Gesellschaft".

After the Nazis had openly proclaimed the boycott of all Jewish firms, I told him the least he could do to show that he did not agree with these measures was to open an account with a Jewish bank. So he did. Reversing his life-long policy, he opened a large account with the Jewish bank, Arnhold & S. Bleichroeder in Berlin, and he continued to deal with them even after he had received a threatening letter from another banker.

To an American such an act looks insignificant. In Germany, however, where everyone's back was bent in obedience to every whim of the "Fuehrer", it was a courageous demonstration.

16.) With one of the partners of this bank, Mr. Merzbach, I had several thorough discussions of the political situation, inside Germany and at a time when even the boycotted German Jews still acclaimed at least part of

Hitler's measures (particularly in the field of unemployment): I already expected nothing but the complete collapse of Hitler's Germany.

17.) Mr. Merzbach (see his general affidavit) can furthermore testify to the fact that I personally—and at long last successfully—pressed my father to sell out all his government, city, and private bonds and to prepare for the collapse by acquiring real estate or similar inflation- and disaster-proof values.

As to my own policy, Mr. Merzbach, as well as Dr. Frankenberg, can testify that I never had any investment in Germany after I had left, but to the contrary took everything out, even if such transfer involved high losses.

18.) Around 1936 Germany began a campaign called "Rueckwanderung von Auslandsdeutschen" (repatriation of Germans living abroad). To induce Germans to return they were offered very favorable rates of exchange, in some cases twice the official rate. After the foregoing it sounds almost sarcastic to ask: Why did I not use this splendid opportunity, thereby settling once and for all the permanent troubles my father had, returning to Germany as the welcome "lost son" as did thousands of other people?

19.) When we lived in Switzerland we ordered our groceries from two or three local firms in St. Moritz. After one of them had tried to cheat us and we had learned that the proprietor was a Nazi-German (though married to a Swiss girl), we stopped buying from this firm.

Some time later Mrs. von Opel had to go to Davos to see the German consul on passport matters. He asked why we did not buy our supplies from the German firm Weren-Biffi. Mrs. von Opel replied that they should first teach this man to be honest and secondly that it was our policy after having been nicely received and accepted by the Swiss community to give all our business to Swiss firms.

We never again bought a cent's worth from Weren-Biffi, who, being more or less boycotted by the community, went out of business.

20.) I feel I should—besides the friends already mentioned—name some more people who have been guests in our house in St. Moritz: *Lord and Lady Jellicoe*, son and wife of the late English admiral of Skagerac fame; the late Dutch sportsman and flyer, *Antony Fokker*; *Mrs. Vansittart* and daughter, sister-in-law of the adviser of the British foreign office; the famous British airplane manufacturer, *Sir Handley-Page* (whom we have known for twelve years); *Lady Duncan* and her sons; the eminent French scientist, *Esnault-Pelletier*; *Martha Dodd*, who spent three weeks with us; *Mrs. Sert*, the late wife of the famous painter.

In addition, many Jewish people have been our guests: the well known singer, *Gitta Alpar* (after her emigration from Germany); *Charlie Chaplin* (introduced by Mr. Fokker), whose pictures have been banned in Germany right after the beginning of the Nazi rule; *Conrad Veidt*, the famous Hollywood actor who for ten years specialized in anti-Nazi pictures; the well known Hollywood director, *Joseph von Sternberg*.

Is it reasonable to assume that all these people of high standing, who were all free to go or to stay away wherever they wanted, would have chosen the company of Nazis?

21.) Who in Switzerland (and the Swiss are rather critical) ever thought that I was sympathizing with Hitler? The friends who vouched for my nataralization, the Liechtenstein Government which accepted me, or the Swiss Secret Police (Fremden Polizei) who assisted in my release from Gibraltar!

22.) The FBI seized a letter, written by a certain Ferdinand Jauda. This letter caused me a black mark ("friend held in Australian concentration camp").

This "friend", a German socialist, had behind him three years of concentration camp in Germany, one and a half years of war against Franco, and another two years of Franco concentration camp when I met him after his escape to Gibraltar. We were detained together and I bought him (a decent German carpenter) some clothes and shoes as he was in rags and barefooted. I continued to help him with small sums after he was sent from Gibraltar to Australia. I even sent him English school books which he wanted for his studies.

Please note that this suspicious "friend" voluntarily returned to England, that he is unconditionally released, works in a machine shop and wants me (by letter of December 27th, 1942) to buy him some tools. He will be dumbfounded to learn that I am interned as an "enemy" alien.

23.) Among the more than one thousand people my corporations employed in this country there was not one single German (except three or four Jewish refugees working on special research in connection with my inventions in my defense plant). Among these thousands were to my knowledge only two German-born citizens, both around seventy years old and naturalized since thirty or forty years (one being a brewmaster and the other a long-time employee of Ladenburg-Thalman & Co.).

24.) The British in Gibraltar (and later the FBI) found in my possession a rather funny "Schnaderhuepferl" (funny song) I had written in 1938, sarcastically playing up how the Austrians had benefited by the "Anschluss". This little song cannot be translated on account of the frequent use of puns. Anyhow, the last part, mentioning the German drive for the collection of "rags" and playing on the double meaning of "Lumpen" (meaning "rag" as well as "scoundrel") closes: "After having collected all the "Lumpen" (rags), why shouldn't we as well be ruled by "Lumpen" (scoundrels)?

25.) The FBI found in my possession a notebook of poems I had written in the summers of 1940 and 1941, poems of religious and rather resigned leanings. Among them were translations of Byron, Keats and Ruppert Brooke, some of them highly praised by experts. Ruppert Brooke's "Soldier", written shortly before his early death in 1915, must be counted among the outstanding glorifications of England.

Can anybody imagine that a person who is in the remotest way a Nazi would spend many months in the thorough study of British "enemy's" poetry?

26.) Every time I had an opportunity to assist or advise American industry I did so unselfishly. I mention one typical example: the firm of Ladenburg & Thalmann with whom I have no business connections was "most interested in learning to what extent Germany is developing the use of producer gas for automobiles", and they asked me "for a fairly exhaustive survey of what your opinion and study of this particular subject matter has been."

To this day I do not know who their "valued client" was, whether a manufacturer or—as the question referred to the possible substitutes for gasoline—the Army Intelligence.

I wrote a survey and on February 13th, 1941, received Mr. Rosenthal's answer: "I greatly appreciate your courtesy and kindness in respect to your letter of February 11th. It has covered the ground most thoroughly and has given me everything I desire. Again many thanks and with the hope that I might have the pleasure of seeing you in New York son * * *"

Can anybody imagine that a Nazi-minded person would go out of his way to give valuable information free of charge to a Jewish banker? On the other hand, through a number of years I had numerous discussions with the Ladenburg partners on the economical and political situ-

ation in Germany. Would they consult and invite a person whom they are not sure of?

27.) Long before Pearl Harbor I asked the Department of Justice for permission to put my professional knowledge at work on defense problems.

I offered to the Government numerous inventions (long before they were seized by the Alien Property Custodian), among them:

a) a process for forging magnesium, aluminum, brass and bronzes

b) a gun crew training device

c) a moulding machine for plastics

d) a navigating device

e) a fastener for airplane cowlings

f) a suggestion for the balancing of the steamer "Normandy" during the lifting operations (rejected)

g) an improvement in rocket-propulsion (bazooka-gun)

h) a "river-mine" of revolutionary design, usable against bridges and dams

I do not want to enlarge upon the very depressing fact that these brain-children of mine are—as soon as they are born—taken away from me, that they grow up without my, the legitimate and loving father's, assistance. I can only hope that they always find the shortest way to the battle front.

At least in one case much damage was done: The Alien Property Custodian, overriding the expressed wish of the War Production Board, sold the Ergo Machine Works on

the auction block, thereby destroying all chances to continue the already successful research on forging I had conducted there.

Let us take one single example: the basic idea of the "river-mine" struck me (strange to say, but the accompanying guard will remember) when we passed the Mississippi River on the way to the internment camp "for the duration". I spent several months working out the details and then sent the plans (with six weeks' delay through censorship) to the Ordnance Department.

Describing the purpose and use of my "river-mine", I say: "the crux of the invention is a new method of igniting floating mines, a method which requires neither an impact, as do the present horn-type mines, nor the presence of a mass of iron, as do the present magnetic mines. Furthermore, against this type of mines no counteraction seems possible. The drifting mine can hardly be seen and cannot be sunk or ignited by machine gun fire, as the float is invulnerable and the charge and the delicate parts are well below the surface. If, for the protection of the bridge, a mine is strung across the river, the first mine stopped would immediately explode, destroying the wire and thus opening the way for the following mines. The charges by which the bridge is blown up can be placed outside of the protected area *without the necessity of any accuracy.*"

A short time ago all newspapers carried articles and pictures regarding the sensational attack on the Moehne and Eder dams which were blown to pieces. The paper said: *"New Method Used.* The R.A.F. apparently had devised a nev technique to attack successfully the power dams, but it was secretive on that point. Unofficial sources said, however, that a way had been found to float the mines past the ordinary safeguards through the sluicegates into the vital machinery. Destruction of the structures by bombing would have required an extraordinary amount of explosive as well as marksmanship of the greatest skill, it was said."

I, as an enemy alien under suspicion, have apparently no right to learn whether it was my, or a fully identical and contemporaneous, invention which worked this miracle. To top this irony of fate: the Moehne dam which was blown up is less than two miles from my father's estate. I am sure that no window on it remained in its frame. Need I tell to what my feelings are:

Defendant's Exhibit 45

May 21, 1935.

Messrs. Davis Polk Wardwell Gardiner & Reed,

New York,

In connection with our first letter of today we wish to give you the following additional information:

1. We wish to draw your attention to the fact that a large part of this stock is encumbered with a right of usufruct in favor of Mr. von Opel Sr. In addition our company has considerable obligations towards the Adler & Co. Aktien-Gesellschaft presently amounting to approximately 3-400,000.00 francs. The stock of our company is at the power of disposal of the Adler & Co. Aktien-Gesellschaft as security for this debt, in that Dr. Frankenberg of Adler & Co. Aktien-Gesellschaft delegate to the Board of Directors, has in his possession the only key for the safe No. 1917 with the Schweizerische Kreditanstalt in Zurich.

2. The management of our company is handled entirely independently by the three members of the Board of Directors. I refer to enclosed certificate of the commercial register of the canton Zurich. Aside from these three gentlemen no one has the right to manage the affairs of our company.

3. As regards the transfer of the different assets we refer to the lists of the participating banks which were enclosed to our first letter.

Since 1932 our company has been examining the question of considerable increase in the capital stock and it has already conducted negotiations in that matter with the fiscal authorities in Chur with a Mr. Janett. * *

4. To prove that the disputed assets had been in possession of our company already in 1932, we refer to the deposit statements. These assets were then securities used to acquire dollar coins for which we likewise enclosed in our first letter confirmation of the transfer.

5. Mr. Fritz von Opel did not have an account with the Adler banking house in 1932 as yet but opened the account only in March 1933.

* * The intention has always existed to reach a settlement with Mr. Fritz von Opel in regard to these assets in connection with the increase in capital stock.

The correctness of the preceding statements can be sworn to at any time by Dr. Frankenberg and Dr. J. Hengeler. Please transmit to us, if necessary, the drafts of the affidavit.

In the event that anything should still remain unclear, please give us notice by telegram so that we may still furnish you with any statements that may be necessary.

Very truly yours,

Defendant's Exhibit 46

May 29, 1935

Messrs. Davis Polk, Wardwell, Gardner & Reed
15 Broad Street
New York

We confirm our cable of today which reads as follows:

"Reference our letter May 21 would like to add that acquisition of the various securities 1932 may not be regarded as trust deposit for Fritz von Opel because acquisition effected without right to reclaim in the intention to show these assets also on balance sheet after increasing the capital stock stop this method was necessary and intended for that reason alone because all assets acquired for sold Opel stock had to be consolidated and safeguarded in the Overseas as executive organ of gift contract betwen Geheimrat Opel and Fritz Opel stop assets therefore were fully the property of Overseas although not shown in balance sheet"

Very truly yours,

Defendant's Exhibit 47

TELEGRAM

New York
Telegraph
Zurich
May 29, 1935

NLT—Bankadler Zurich

Overseas was instrumentality for executing gift agreement therefore my assignment 1932 was not in trust because made without right to re-claim since any demand of return would have frustrated concentration and safeguarding of his and sister's rights demanded by my father. Transfer of assets took place at cost to be set off later against capital increase thus full property Overseas regardless of balance sheets. If in agreement with this legal position confirm attorneys in full cable and letter.

Opel

Defendant's Exhibit 48

[Geh. v. Opel]

at present: Westerland/Sylt,
Haus Kleemann

August 2, 1935

S. H.
Herrn Rechtsanwalt Dr. Gros
Berlin-Potsdamer Platz
Columbushaus

Dear Doctor,

I thank you for your ingenious statement concerning

a) the evaluation of speculative profits,

b) the status of a German residing abroad as a member of the Board of Directors of a corporation with regard to foreign exchange and to taxation, and

c) the deed of gift [usufruct].

re a) I, then, take it to be a fact that the view which you expressed to me verbally is correct, namely that it is at the purchaser's discretion to set off individual sales against individual purchases; this amounts, practically, to saying that it is left to the purchaser's discretion to make belated payment of a tax or possibly not to make payment at all. As I told you, the American way of evaluation seems to me to be more correct, namely to apply the first sale against the first purchase or vice versa.

re b) Your opinion* confirms in all essentials my view that my situation is clear as far as the question of taxation is concerned, but that the flexible clause 'essential interest' may lead to difficulties at least with regard to foreign exchange legislation. The one thing that is certain is, of course, that the expression 'essential interest' refers to the management of the business only and has nothing to do with the stockholdings as such. Nevertheless, I have got a feeling that large shareholdings may possibly be taken as a basis to construe an essential participation in the management, namely inasmuch as it might be claimed that the owner of a majority may logically be expected to take a very active interest in his business. (p. 2) If the clause were interpreted reasonably, I would see no difficulties, but this weasel word 'essential interest' allows for all sorts of malevolent interpretations. I believe, therefore, that one should await, at any rate, the advice of the Devisen-

* Translator's note: 'Guthaben' is evidently written in error for 'Gutachten'

stelle before accepting membership on the Board of Directors.

re c) I also agree with you with regard to the deed of gift and I know that it is a mutilation of the Hachenburg draft and devoid of any legal foundation. I fought, at the time, against the insertion of the *usufruct provisions*, for all the reasons which you mentioned, namely

1. because it is self-evident that I would take care of my parents in case of need (and the usufruct was intended for this purpose) and

2. because I am legally obliged to take care of my parents anyhow,

3. because the entire wording of the right of usufruct is inadequate, and

4. because I feared from the very beginning complications connected with the law governing foreign exchange which could have been avoided.

So you are by no means the only one to hold that opinion of the contract, and I believe, as I did before that the exact wording of the Hachenburg draft should have been used.

Your opinion that at the time of the Berlin negotiations I was not aware of the subtle difference between a claim to the creation of a usufruct and the usufruct itself is by no means correct. I know today, just as I did then, that the charges against my father were wholly unjustified and that his conviction for an unlicensed waiver was nothing but a fiction, which we had to put up with under the pressure of circumstances. You may be sure that if my uncle had not been involved we would have fought over this point like lions, and left to ourselves we certainly would have been able to accomplish something.

So I still believe that, what we did achieve was the best we could expect in view of the unfortunate fact that we were linked with my uncle, and that your legal arguments would have helped us very little. Nowadays I understand decisions are required to be made no longer on the basis of the written law, but that all the circumstances of the case are taken into consideration in reaching a decision. These circumstances had become rather unfavorable for us the moment our own case was mixed up with that of my uncle. (p. 3)

Your argument that a usufruct had not yet been created, did not seem very effective to me at the time, nor do I believe that your opinion will prevail today. But your arguments may be of use even in the present situation, namely insofar as they will serve to ascertain whether or not my father will have a claim to any income which may accrue in the future.

From a purely legal point of view the situation, I think, is such that he is not allowed to waive any usufruct which has accrued without a foreign exchange license. But since in your opinion a usufruct has not yet been created, so that proceeds from such a usufruct cannot accrue, you believe that a waiver or a license to waive such a claim is not necessary either. I am of an entirely different opinion. I would see a waiver, not from a legal but from an economic point of view, in the mere fact that my father waives his right to have a usufruct created.

So, opinion stands against opinion. But since the question is still of a very practical importance, you have now got a chance to prove that your point of view is correct. You would, in that case, of course, operate under far more favorable circumstances than you did a year ago, for today it is very much more a question of right and not of might than it was then. I would therefore ask you to examine this question very carefully, especially with a view to ascertain which office would be in a position to give an authentic and binding answer to it. (I presume it

is the Office of Foreign Exchange Control). But please do not take any steps before discussing the pros and cons with me thoroughly. As to the facts I may say that all the assets which were given to me, or their substitutes, have been transferred to a holding company, so that only the dividends of this holding company are to be deemed a usufruct under the terms of the deed of gift. Since all my American companies are highly under-capitalized (e.g. my brewery operates with only one third of the capital which is customary for breweries having the same gross receipts), it would in any event be years before the subsidiaries could think of distributing dividends and it would be still longer before the holding company itself had accumulated the customary reserves. So there can be no reasonable prospect of the holding company paying dividends within the next few years. (p. 4)

These plain facts, which can be proved at any time, have become still more complicated by the fact that I shall probably have to reorganize the holding company. The reasons are as follows:

The revised American income tax law considers all companies whose majority is held by 5 persons or less as private holdings, i.e. these companies are required to pay not the customary corporation taxes of 13½%, but the rates applying to private individuals, which are several times higher. That means practically that only such companies are recognized as holding companies which have eleven or more stockholders.

After extended consideration I have finally found a way to meet this requirement, namely by selling to outsiders all the stocks I own. To be able to do this I have to keep my credits with the holding company on a loan account and to obligate myself towards the prospective stockholders not to claim any interest until the stockholders have been satisfied and sufficient reserves accumulated.

I thought I should explain to you the above facts in detail in order to show you that it will be a long time before a

usufruct will accrue. Nobody would regret that more than I myself, for I, too, am waiting for my 20%. In spite of this situation, which was brought about for economic reasons, my father continues to be deeply troubled by this usufruct matter and it would therefore be desirable to elicit, if possible, a statement from the Devisenstelle as discussed above. As I said before, I personally doubt whether we shall succeed, but maybe you will find a suitable way.

I approve of your draft of an amendment to the deed of gift. I believe a provision of that kind is more suitable than a testamentary provision, and since my father and I agree in this respect, this way seems to be the right one. But before making final proposals to my father I want to think over the particulars, especially the question of evaluation. The evaluation of 9 millions, which you mentioned, comes very near the balance sheet which I made up for the Reichsbank a year ago. The values specified in it have not changed materially, except that I shall probably have to expect a substantial loss in connection with the recent delivery of foreign exchange, a loss which I estimate at about $60,000.00 to 70,000.00. I presume that I shall know the exact amount within the next 6 weeks, so that all figures will then be available. (p. 5) My father is at the moment still in Berlin. You might take the opportunity to discuss with him the different questions I raised in this letter, especially the usufruct question.

I remain with best regards,

Yours

FRITZ VON OPEL
(sgd.) Ritt (?)

Defendant's Exhibit 49

(See Opposite)

Def. Exhibit 19
[Excerpts]

Ausland

Verwaltungs-Conti.

Konto-Korrent

Consortium O. Dollar-Conto

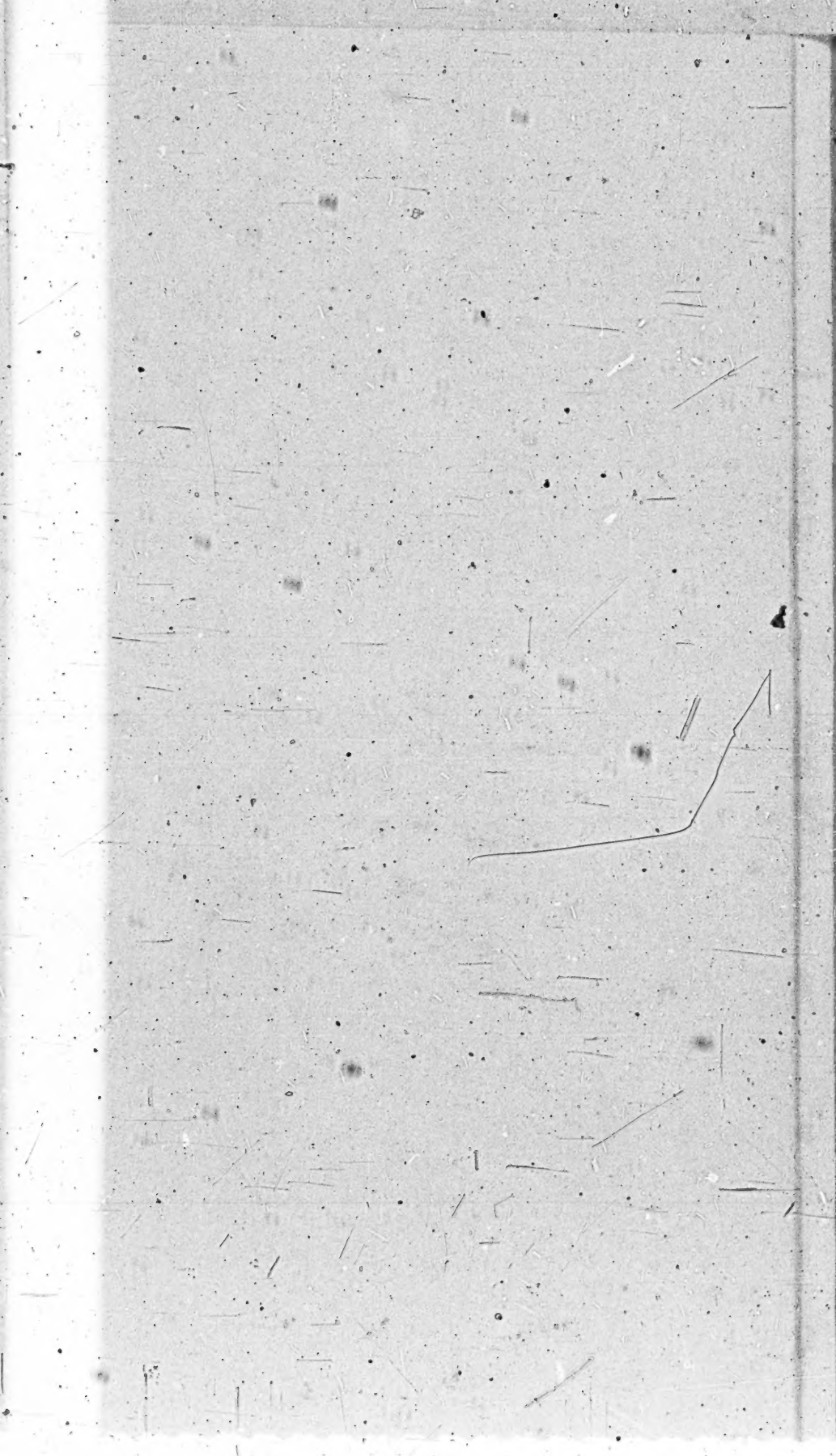
Co

					Soll	Haben
1932						
Sept.	12	City Bank	Einlagen	3		45452 30
Dezbr.	31	" "	"	"		4742 50
"	"	" "	Bezuege	"	5056 11	
"	"	Hallgarten	"	5	142 30	
"	"	Saldo			44996 39	
					50194 80	50194 80
1933						
Jan.	1	Saldo Vortrag				44996 39
Maerz	31	Ladbg.,Thalm.&Co.	Einlagen I.Quartal 33.	1		699880 10
"	"	" " "	Bezüge " "	" "	699907 30	
"	"	City Bank	Einlagen " "	" 3		13953 24
"	"	" "	Bezüge " "	" "	13639 63	
"	"	Hallgarten&Co.	Einlagen " "	" 5		6152 75
"	"	" "	Bezüge " "	" "	6152 75	
Juni	8	City Bank	Einlagen II. "	" 3		45374 54
"	"	" "	Bezüge " "	" "	23812 50	
"	30	Ldbg.,Th.&Co.	Einlagen " "	" 1		300000 -.
"	"	" " "	Bezüge " "	" "	542 56	
"	"	" " " 9	" "	" 9	300000 -.	
Sept.	30	" " "	Einlagen III. "	" 1		233493 02
"	"	" " "	Bezüge " "	" "	498708 65	
Dezbr.	31	" " "	Einlagen IV. "	" "		533673 46
"	"	" " "	Bezüge " "	" "	572915 78	
"	"	Hallgarten	Einlagen " "	" 5		142 30
"	"	Ladbg.Th.&Co.10.	" "	" 10		19406 85
1934						
März	31	" " "	" I. "	34 1		299071 36
"	"	" " "	Bezüge " "	" "	275298 47	
"	"	" " " 9.	Einlagen " "	" 9		300953 12
"	"	" " "	Bezüge " "	" "	113453 12	
"	"	" " " 10.	Einlagen " "	" 10		13 03
"	"	" " "	Bezüge " "	" "	19419 88	
				Transport	2523850 64	2497110 16

1934		
Juni	30	Ladbg
"	"	"
Sept.	30	City
"	"	Ladbg
"	"	"
"	"	"
"	"	"
"	"	"
"	"	Werts
"	"	Cons.

Consortium O. Dollar-Conto

						Soll	Haben
34				Transport		2523850 64	2497110 16
nI 30	Ladbg.Th.&Co.			Einlagen II.Quartal 1934.	1		23 57
"	" " "			Bezüge " " "	"	1743 01	
pt.30	City Bank			Uebertrag	3	67014 34	
"	Ladbg.Th.&Co.			Einlagen III.Quartal	1		4205 48
"	" " "			Bezüge " "	1	19954 15	
"	" " "			Saldo	1	1277 07	
"	" " "			" Loan Account	9		112500 -.
"	Wertschr."Dep.			"	9	1 -.	
"	Cons.O.			"	18		1 -.
						2613840 21	2613840 21



19. # Consortium O. Dépôts

			Soll	Haben
1952				
Dezbr.	31	pro memoria lt. Dépôtbuch	9	1/-
1954				
Sept.	30	Uebertrag a/. Primag		1 -.

19.

Consortium O. .. Schw. Franken-Conto

			Soll	Haben
1925				
Juni	30	Ladbg., Th.Acc. 9 Einlagen II.Qu.1925	9	1,500,000 -.
Sept.	30	" " " 10 " III. " "	10	1,000,000 -.
"	"	" " " " Bestge " " "	"	500,000 -.
Dezbr.	31	" " " 9 " IV. " "	9	1,500,000 -.
"	"	" " " 10 " " " "	10	500,000 -.
				2,500,000 -. 2,500,000 -.

Defendant's Exhibit 50

November 27, 1935

12/7

Swiss Federal Banking Commission
Berne

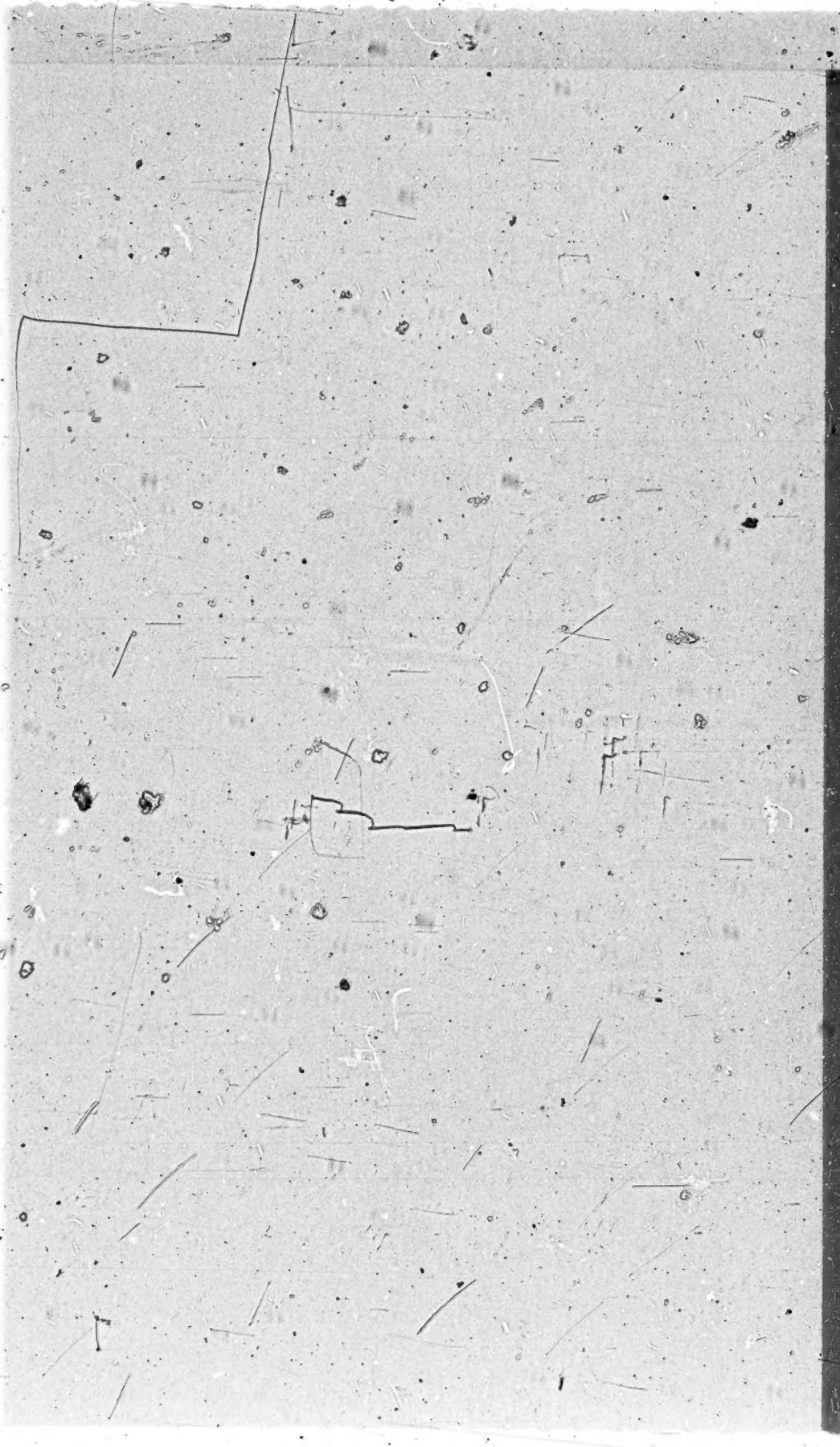
In reply to your letter of the 14th inst. we wish to inform you of the following:

1. The entire capital of our company comes from a single group which also has a controlling interest in the capital stock. Our company refuses categorically to accept any funds from third parties.

2. In keeping with this structure of our company all the corporations financed by us belong to the same concern and form one economic entity. Our company contemplates the purchase of majority holdings of stock of American corporations; however, it is engaged in a litigation with the American government in regard to a deposit of gold which the American government refuses to release.

Very truly yours,

Overseas Finance Corporation Ltd.



Defendant's Exhibit 51

CABLEGRAM

1931 OCT 7 AM 7 43

CDM4 CABLE=RUESSELSHEIM 19 7/1145

JOHN THOMAS SMITH GENERALMEX (JOHN THOMAS SMITH, CARE GENERAL MOTORS EXPORT CO)=NEWYORK (1775 BROADWAY)=

UNLESS ADVISED OTHERWISE TELEPHONING YOU EIGHTH TEN AM NEWYORK STANDARD TIME=

WILHELM VON OPEL.

Defendant's Exhibit 52

October 20, 1931

City Bank Farmers Trust Company,
22 William Street,
New York, N. Y.

Gentlemen,

The General Motors Company will deliver to you some time within the next two weeks 47625 shares of their Common Stock which is to be received by you for my father's account, Wilhelm von Opel, with advice to him. Please hold these temporarily subject to his further instructions.

Very truly yours,

(Sgd.) FRITZ v. OPEL

Defendant's Exhibit 53

CABLEGRAM

CABLEGRAM RECEIVED FROM
DEUTSCHE BANK AND DISCONTO GESELLSCHAFT,
FRANKFURT A/M, GERMANY

NEW YORK, OCT. 21, 1931

P160 EHM 7.41 AM
SHIMGEOFSU

GEHEIMRAT DR WILHELM VON OPEL OF RUESSELSHEIM HAS INSTRUCTED US TO CABLE TO YOU THAT THE FOLLOWING LETTER ADDRESSED BY HIM TO YOUR BANK WAS POSTED TO DAY BY US QUOTE UNTIL YOU HEAR FROM ME TO THE CONTRARY YOU ARE HEREBY AUTHORIZED AND REQUESTED TO ACT UPON ANY AND ALL INSTRUCTIONS WHICH MAY BE GIVEN YOU FROM TIME TO TIME BY MY SON FRITZ VON OPEL FIRST REGARDING THE SALE OF SHARES OR BONDS OR OTHER SECURITIES WHICH YOU MAY HOLD FOR ME AT ANY TIME PROVIDE PAYMENT IS MADE TO MY ACCOUNT WITH YOU AND SECOND REGARDING THE PURCHASE OF SHARES OR BONDS OR OTHER SECURITIES SAME AS REGARDING PAYMENT TO BE MADE FROM MY ACCOUNT AGAINST RECEIPT OF SUCH SHARES BONDS OR OTHER SECURITIES PURCHASED FOR MY ACCOUNT SIGNED DR WILHELM VON OPEL UNQUOTE WE CONFIRM THE CONTENTS OF THIS LETTER AS WELL AS THE SIGNATURE OF GEHEIMRAT DR WILHELM VON OPEL

Defendant's Exhibit 54

[EXCERPTS]

INCOME

CUSTODIAN FRITZ VON OPEL

TRUST NO 15599
DUP STMTS
PRINC STMT WITH REMITTANCE
MAIN ACCOUNT

Trust No.	Date	Items	Debit	Credit
	1932			
15599I	JAN 6	PAID CUSTODIAN FRITZ VON OPEL SPECIAL A/C	2 926 21	
15599I	JAN 6	PAID CUSTODIAN FRITZ VON OPEL PRINCIPAL A/C	11 704 87	
15599I	FEB 6	CRED CUSTODIAN FRITZ VON OPEL SPECIAL A/C	1 661 84	
DO	DO	CREDIT CUST FRITZ VON OPEL PRINC	6 647 36	
15599I	MAR 7	CREDIT CUST FRITZ VON OPEL SPEC A/C 15599B	637 50	
		CREDIT CUST FRITZ VON OPEL PRINC A/C 15599	2 550 00	
15599P	APR 6	PAID CUST FRITZ VON OPEL SPEC A/C 15599B	6 278 50	
		PAID CUST FRITZ VON OPEL PRINC A/C 15599	25 714 62	
15599I	MAY 6	CREDIT CUST FRITZ VON OPEL SPEC A/C 15599B	161 40	
		CREDIT CUST FRITZ VON OPEL PRINC A/C 15599	645 60	

PRINCIPAL

CUSTODIAN — FRITZ VON OPEL — TRUST NO 15599

Trust No.	Date 1931	Items	MAIN ACCOUNT Debit	INTEREST COMMISSION Credit
15599P	NOV 18	AS OF NOV 17 TRANSFERRED FROM A/C N C B OF NY AS INSTRUCTED BY GEHEIMRAT WILHELM VON OPEL		432 116 49
15599P	NOV 19	AS OF 11/18/31 TRANSFERRED FROM N C B OF N Y AS INSTRUCTED BY GEHEIMRAT WILHELM VON OPEL		431 843 23
DO	DO	TRANSFERRED FROM NATIONAL CITY BANK OF N Y AS INSTRUCTED BY GEHEIMRAT WILHELM VON OPEL		432 480 84
15599P	NOV 20	TRANSFERRED FROM N C B DEMAND A/C BY ORDER OF GEHEIMRAT WILHELM VON OPEL		432 845 19
15599P	NOV 21	TRANSFERRED FROM NATIONAL CITY BANK OF N Y AS INSTRUCTED BY GEHEIMRAT WILHELM VON OPEL		432 936 27
15599P	NOV 24	TRANSFERRED FROM N C B OF N Y AS INSTRUCTED BY GEHEIMRAT WILHELM VON OPEL		432 526 62

Defendant's Exhibit 57.

LIST OR MANIFEST OF OUTWARD-BOUND

S.S. "EUROPA" FIRST CLASS—Passengers sailing from NEW YORK, OCTOBE

Family name	Given name	Age	Sex	Country of which citizen or subject (nationality)	Country where you are going to live	Country of birth	Country where you lived before coming to the United States	Last arrival; in contine United States or insul possessions Date	P
			M	GERMANY	GERMANY	GERMANY	GERMANY	9.27.1931	NEW
			F	DO	DO	DO	DO	9.27.1931	D
VON OPEL	FRITZ	35	M	DO	DO	DO	DO	10.15.1931	D

S.S. "EUROPA" FIRST CLASS—Passengers sailing from NEW YORK, OCTOBER 31st, 1931 Bound for Port of CHE

SMITH	JOHN THOMAS	52	M	U.S.A.	U.S.A.				

it 57

BOUND PASSENGERS

, OCTOBER 31st, 1931 Bound for Port of BREMEN

ival; in continental States or insular possessions		Where you last lived (last permanent residence) in the United States or insular possessions thereof		Race or people	Calling or occupation	Married or single	Whether able to Read	Whether able to Write
	Port	City	State					
31	NEW YORK	NEW YORK	N.Y.	GERMAN		M	Y	Y
31	DO	DO	N.Y.	DO	H. WIFE	M	Y	Y
31	DO	DO	N.Y.	DO	INDUSTRIAL	M	Y	Y

rt of CHERBOURG

Defendant's Exhibit 58

10. Nov. 1931

Genemoleg New York.

Bradley Geheimrat under Fritzs advice has withdrawn proposition to retain one half stop settlement should be carried out pursuant to letters of instruction

Smith

Defendant's Exhibit 59

FVO to Mason Houghland, London, England—8/14/37

—Telegram:

"Hope to arrange seeing you somewhere on you(r) way back. Please mail me probable route you take. Regards—FVO Kanpen Sylt."

Defendant's Exhibit 60

Cable—8/4/37—to Houghland, St. Anganagh Castle—Hotel Shankill, Eire:

"Would your plans permit seeing me in or near Hamburg any date after Aug. 25. Beaucoys de plaisir. Regards Opel Zurich Dolder Hotel"

Defendant's Exhibit 61

On FVO Stationery:

Kampen Sylt
Aug. 23, 1937

Dear Mason:

Many thanks for your cable informing me about the trip you intend to take to Tyrol. I hope very much you enjoyed the journey you had and that your route took you from Frankfurt or Mainz either through the Black Forest (Baden Baden and Freudenstadt) or via Rothenburg & Nurnberg, where the Party-Congress is just being prepared.

In Munich of course you will be able to find your way all by yourself. I very much recommend a visit of the "Deutsche Museum" (Museum of Technic) and the WEW & OH Art Galleries.

Leaving Munich you will surely take the most wonderful Reichs-Autobahn (State Auto Road) to Salzburg. On the way back from Tyrol, I suggest you the following route which brings you to the finest spots of Switzerland and Northern Italy:

Salzburg—Landick—St. Moritz (6 & 7 hours). Stop in the Palace Hotel or Suvretta-House in St. Moritz. Visit from there by car (½ hours trip) Morteratsch Glacier and go up by the funicular to Zmottas Muraugh. From St. Moritz take the Maloyo Pass to Italy. On the way down have a look at the small village of Soglio (1 hour extra).

From the Italian border take the new Gundria-Road to Lugano. On your way along the Lake of Lugano stop 10 minutes at Gandria, a village of fishermen. Take lunch in Lugano and continue to Stresa (Sago Maggione). Stop over night at Hotel des Isles-Boromae. Visit next morning the Boromae Islands. From Stresa follow the Lago Mag-

giori to Locarno and over the 3 passes to Gotthard, Turla, Gramsel to Lucerne. Stop a day in Lucerne & Clarne alongside the Vierwaldstaetter See to Kuessnacht & back.

You can of course save a day or two by dropping the detour from Lugano to Stresa and Locarno going directly from Lugano to the St. Gotthard Pass.

From Lucerne go to Zurich (2 hours) and stop there at the Grand Hotel Dolder. My friend and banker Dr. Frankenberg who lives there will be very glad seeing you. From Zurich you can go to Paris either directly or over Verdun, visiting the battlefields, what as I remember you have done already.

As I do not know how many time(s) you are going to spend in Europe and we(a)ther at all and when you pass Zurich I can off-hand not tell you we(a)ther I can arrange to see you there, especially as I don't know we(a)ther you leave from Hamburg, Bremen or Cherbourg. As things look now, I shall remain here till September 15th, then leave from Berlin, Wiesbaden and Budapest. In the second half of October I am sailing to New York, Lowell (see Chapter 77 by of the bankruptcy law) and Shreveport. On the way back or forth I naturally would very much like seeing you in Nashville.

A fortnight ago I had a conference with Crittendon and Bayer in Zurich who with Mrs. Crittendon and Mrs. Bayer made the trip above mentioned; which they very much liked. They are sailing Aug 26th on the Manhattan.

I very much hope that Mrs. Houghland and you will enjoy this new trip through Europe and that there will be an opportunity for me of joining you for some time in Hamburg or Berlin.

With heartiest regards to you both

Your

FVO (signed)

Defendant's Exhibit 62

Opel cable—Kampen Sylt, August 28, 1937:

"Pleased meeting you morning September Vierzehn Hotel Vier Jahresgesten Hamburg Frankenburg not present in Zurich Regards Opel

To Houghland—American Express, Venice"

Defendant's Exhibit 63

Houghland telegram—7/20/39:

"Coming abroad when can I meet you for 1 or 2 days preferably during 1st half of August"

To FVO Chatlet Kulm, St. Moritz, Switzerland.

Defendant's Exhibit 64

Telegram FVO (Kampen Sylt) to Nash Spur Dists. Co., 7/22/39:

"Would meet you any time Hamburg but would like both of you to come to our estate near Cologne after Aug 18 Regards"

Defendant's Exhibit 65

Telegram 7/22/39 of Houghland to Opel in Kanpten Sylt:

"Delighted to accept invitation Suggest about Aug 25 if convenient to you. Address American Express London—Houghland"

Defendant's Exhibit 66

CONFERENCE IN WASHINGTON APRIL 29, 1935

Present:

B. Bernstein, attorney of the Treasury Department,

at the start of the conference another gentleman who left immediately after the introductory sentences,

a female office employee, who, however, did not participate in the conference, but was engaged in other matters,

Dr. Eugen Meier,

Dr. Schlatter of the Swiss embassy.

Mr. Bernstein spoke English, I spoke German; Dr. Schlatter interpreted.

Upon my request that a decision should be rendered in the pending matter if possible during my stay in the United States so that I may take the necessary measures, Mr. Bernstein replied that the decision in this case was difficult and that therefore final disposition had not been made as yet. Several items, without which a decision could not be reached, have not been clarified until now. In regard to these points, he then proceeded to question me as follows:

1. *Relations of Mr. Fritz von Opel to Uebersee.*

I answered, in accordance with the information given at the time by wire, that he was stockholder, depositor of assets, and from time to time technical advisor to the company.

Upon the question as to the stock holdings of Mr. F. von Opel I replied that I did not know since we had bearer shares. I knew positively that no American citizen and no person having residence in America was a stockholder. Mr. Bernstein insisted that it should be known to me whether Mr. von Opel had a controlling interest; I replied that a group of which Mr. von Opel was a member had a controlling interest but that I did not know the composition of that group. If my information was correct, that group also included other members of the von Opel family. The extent of the participation of Mr. F. von Opel was not known to me.

I answered negatively to the question whether Mr. F. von Opel was a member of the management. I described the full powers as a limited authority to act and to sign [Handlungsvollmacht] granted on March 17, 1933 which was of limited duration and had been revoked in the meantime, and which did not make Mr. von Opel a representative organ of the company.

I answered negatively to the question whether other stockholders had acted for the company in similar fashion.

2. Business of the Uebersee.

In regard to the nature of the business of the Uebersee I referred to section 2 of the by laws and remitted a notarized copy of the by laws as well as an excerpt from the commercial register, Zurich, which shows that Dr. Frankenberg, Dr. Henggeler, and Dr. Maier are members of the board of directors.

Questioned regarding the nature of the banking operations, I declared that they consisted mainly of the administration of property.

When questioned about the place where business is transacted, I stated Switzerland and denied that business was transacted in the United States, but held that only

investments of capital had been made here. The amount and composition could be determined from the statements made by Mr. Friedrich Willie of Ladenburg, Thalmann & Co., which could be found in the files. When asked about the existence of other assets particularly other gold in the U.S., I answered in the negative. I replied in the affirmative the question whether a considerable part of the property was located in the U.S.

3. Assets of the corporation.

Mr. Bernstein then questioned me regarding the amount of the assets and liabilities of the corporation. I stated these to be approximately 7 million francs. He demanded the balance sheet of the corporation whereupon I handed him the balance sheet as of December 31, 1934.

4. Relations to Mr. Hoffacker and the firm Theodore Hoffacker & Co.

When questioned on above, I declared that I had absolutely no knowledge of such relations, and that also nothing was known to me of an exchange of letters or telegrams between Uebersee and Mr. Hoffacker or the firm Theodore Hoffacker & Co. Mr. Bernstein then asked about the relations between Mr. Fritz von Opel and Mr. Hoffacker or the firm Theodore Hoffacker & Co. I replied that it was not known to me whether such relations existed.

Finally Mr. Bernstein also questioned me about the purpose of my coming to the United States, whereupon I stated that I had come in order to intervene in the matter of the release of the gold.

Dr. Frankenberg, for information
with best regards

[Signature]

May 18, 1935.

Defendant's Exhibit 67

TELEGRAM

June 14, 1936

NLT Bank Adler
Zurich (Switzerland)

Inform Henggeler sale of stock to if possible more than eleven purchasers, to be effected immediately, not later than end of month. Stop. Subject to above condition consent to retention by bank of equivalent in dollar credit until mutually agreeable clarification of question of margin. Stop. Payment of interest on remainder of guaranty by Adler. Cable consent.

Frankenberg

Hotel Pierre New York.

Hoffacker Room 1310

Defendant's Exhibit 68

IN THE
TREASURY DEPARTMENT
OF THE UNITED STATES

In the Matter of the Application of FRITZ VON OPEL for a License under the provisions of Executive Order No. 6560 of January 15, 1934, and subsequent Executive Orders.

CITY OF NANTUCKET
COUNTY OF NANTUCKET
COMMONWEALTH OF MASSACHUSETTS, *ss.*:

FRITZ VON OPEL, being duly sworn, deposes and says:

I am 42 years of age. I am a citizen of and hold a passfort from the Principality of Liechtenstein. I was born a German but renounced my German citizenship in 1939 and became a citizen of Liechtenstein. I have been in the United States since May 9, 1940; when I arrived here on a visitor's visa. I now have pending an application for an extension of my visa until May 13, 1942. My wife and I are now living on the island of Nantucket, where we have rented a house for the summer months. My wife immigrated from Cuba in May 1941, and I intend to do likewise. We have no children.

I left Germany in the Fall of 1929 and have since resided outside of Germany, most of the time in Switzerland. I have no property in Germany. I took all my property out of Germany under circumstances hereinafter described.

After leaving Germany in 1929, I spent two years in the United States and in Belgium in the employ of General Motors Corporation (1930-31). In the meantime, the

economic and political situation in Germany had undergone such a drastic change that I decided not to return to Germany at all, but to invest practically all my funds, i.e., all the property I received from my father by a deed of gift, hereinafter referred to, in the United States.

By profession I am a mechanical engineer. I hold a degree as such from the Darmstadt Hochschule in Germany. After graduating from the University in 1923 or 1924 I was employed as mechanical engineer in the Adam Opel Motor Works at Russelsheim-am-Main, Germany. The Adam Opel Motor Works was a family enterprise organized as a partnership and engaged in the manufacture of motor cars at Russelsheim, with various branches in other parts of Germany. The factory had originally been founded by my grandfather, Adam Opel, in 1862, for the manufacture of sewing machines, bicycles, etc.

My father (Wilhelm Von Opel) and his brothers inherited the business from my grandfather and continued to conduct it as a partnership. In time the business grew to very large proportions. In 1928 it was the largest automobile concern in Germany. My father, my uncle, Dr. Fritz Opel, the heirs of Heinrich von Opel, and the heirs of Karl von Opel, were then the only partners in the business.

In 1928 the Adam Opel Motor Works was reorganized as a corporation under the title Adam Opel Aktien Gesellschaft, with the former partners as shareholders. The capitalization of the new company was 60,000,000 Reichsmarks divided into 6,000 shares of a par value of 10,000 Reichsmarks each.

In March or April 1929, the stockholders of Adam Opel A.G. sold to General Motors Corporation 80% of the stock of Adam Opel A.G. Of the remaining 20%, one-half, or 10%, was retained by my father.

In October 1931, my father made me a gift of his 10% of the stock of Adam Opel A. G., having a par value of 6,000,000 Reichsmarks. My father reserved certain rights

in that stock and in its proceeds, but in 1937 my father surrendered all such rights.

In April 1929 my father had deposited said 10% of stock with the National City Bank in New York under an agreement whereby he had a right to call upon General Motors to buy the stock at certain agreed prices, while General Motors had an equal right to call upon my father to sell said stock to General Motors.

In November 1931, General Motors Corporation bought said 10% of the stock, the purchase price amounting to $3,737,748.64. The purchase price was paid part in cash and part in General Motors stock. They paid $2,594,748.64 in cash and delivered 47,625 shares of General Motors common stock. Subsequently this stock was sold and the proceeds were deposited in my name in the City Bank Farmers Trust Company, where also the cash received from General Motors Corporation had been deposited.

During November and December 1931 substantially all the cash in my accounts with the City Bank Farmers Trust Company was invested in high-grade American securities upon cable instructions from me to City Bank Farmers Trust Company.

In 1931 I bought substantially all of the outstanding capital stock of a Swiss corporation, organized in 1922, known as Uebersee Finanz Korporation A.G.* The entire purchase price of Uebersee stock was paid out of the proceeds of the sale of said 10% of Opel stock, which I received as a gift from my father.

In May 1932, I transferred to Uebersee's account with City Bank Farmers Trust Company in New York, all the securities and all the cash the Trust Company then held in my accounts, these constituting the proceeds of the sale of said 10% of Opel stock to General Motors Corporation.

---

* I shall refer to this hereafter as "Uebersee"

The total cost of the securities so transferred, plus the cash likewise transferred to Uebersee, amounted to approximately 12,000,000 Swiss francs. In this wise I became and still am a creditor of Uebersee in that amount.

In about 1936 I sold the stock of Uebersee to Swiss citizens, who now own it. I am not a stockholder nor director or officer of Uebersee, but act as its adviser in technical matters. As set out above, however, I am its principal creditor.

By far the greatest part of the proceeds of the sale of the 10% of the Opel stock to General Motors have been invested in various American enterprises, which I shall now mention. Besides these American interests, Uebersee has only relatively small investment consisting of a plantation in British East Africa, a part interest in a mine in Hungary, which is operated under a five year lease by Hungarians, and a house in St. Moritz, Switzerland.

The important American investments of Uebersee are in Harvard Brewing Co. and Spur Distributing Co.:

Harvard Brewing Co., a Delaware corporation organized in December 1932, is engaged in the business of manufacturing and distributing malt beverages. Its brewery is located in Lowell, Mass., and it does business exclusively in the New England States. Uebersee owns approximately 345,000 out of the 625,000 shares of common stock of Harvard outstanding.

Spur Distributing Co. Inc., is also a Delaware corporation organized in 1928. It is engaged in operating a gasoline distributing system through a chain of filling stations in states east of the Mississippi River. It also distributes mineral oil, tires and soft drinks. Uebersee owns approximately 73,000 out of 139,000 shares of common stock of Spur outstanding.*

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*Spur has two affiliated companies: Winn Oil Co. and Ajax Transportation Co.

Uebersee also had large investments in other oil companies, such as Oil Refineries, Inc., Oil Production, Inc., and Hurricane Petroleum Corp., all Louisiana corporations. These corporations owned oil leases, produced crude oil and operated refineries. Within the past two years these corporations have met financial reverses resulting in a very substantial loss to Uebersee.

Uebersee owns all the stock of the following corporations:

1. Amerlagene, Inc. of Shreveport, La., engaged in crude oil production and in liquidating certain production refinery and pipe-line assets formerly owned by Hurricane Petroleum Corp.

2. Westminster Industrial Corp., a New York corporation with an office at 630 Fifth Avenue, New York City, engaged in financing small accounts, especially financing patents and the development of new manufacturing methods.

3. Ergo Machine Works, a New Jersey corporation, located in Dunellen, N. J., engaged in general machine work.

This affidavit is being submitted primarily in support of the application (N. Y. 169054) made by W. L. Schoenheimer for permission to open a $25,000. credit in my favor pursuant to cable instructions from Adler & Co. of Zurich, Switzerland. Further than that, however, I want to present to the Government a comprehensive statement of my relation to and interest in Uebersee, which controls the American enterprises hereinabove referred to. Every one of these enterprises, by reason of the foreign interest therein, i.e., the interest of Uebersee, may be under necessity of applying for licenses under the Executive Orders and Regulations. If in connection with these applications informa-

tion is required as to the nature and extent of that foreign interest, perhaps this affidavit will serve a useful purpose.

(Signed) FRITZ V. OPEL

Sworn to before me this
30th day of July, 1941.

ALBERT F. EGAN
Notary Public
Nantucket City
Nantucket, Mass.

Defendant's Exhibit 69

Application No. NY246362

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ISIDOR J. KRESEL, being duly sworn deposes and says:

On September 12th, 1941, I filed an application on behalf of Overseas Finance Corporation of Liestal-Basle, Switzerland, for a license permitting it to draw 25,000 Swiss Francs (approximately $6,000) out of an account which its bankers, Adlet & Co. of Zurich, Switzerland, maintain for the applicant's benefit with Arnhold & S. Bleichroeder, Inc., investment bankers, 30 Broad Street, New York City.

On October 19th, 1941, I received a letter from the Federal Reserve Bank of New York requesting information concerning the applicant on Treasury Form TFBE-1 (Revised). I submit herewith the information required, as far as it has been made available to me; I cannot give any of the information upon my own knowledge:

1. The name of the business enterprise is the Overseas Finance Corporation (Uebersee Finanz Korporation A.G.);

it was organized under the laws of Switzerland in 1922 and has been operating as a holding company since that time; the principal office is located at Liestal-Basle, Switzerland; it has no other branches, subsidiaries, affiliates, or sales offices located outside of the United States.

2. Report on TFR-100 has not yet been filed.

3. The applicant is a holding company, having its principal investments in the United States. The chief investments in the United States are in the following corporations:

Harvard Brewing Co., Lowell, Mass.	a Delaware Corporation
Spur Distributing Co. Nashville, Tenn.	a Delaware Corporation
Amerlagene Inc. Shreveport, La.	a Delaware Corporation
Westminster Industrial Corporation, 630 Fifth Ave., N. Y. C.	a New York Corporation
Ergo Machine Works Inc. Dunellin, N. J.	a New Jersey Corporation

4. The directors of the applicant are:

Dr. Eugene Meier, Liestal-Basle, Switzerland

Dr. Joseph Henggeler, Zurich, Switzerland

Dr. Hans Frankenberg, Hotel Ritz-Carlton, New York City

Dr. Frankenberg, a Haytian national, immigrated to the United States from Cuba on March 25, 1941.

Dr. Meier and Dr. Henggeler are Swiss nationals.

5. Deponent has no information with respect to the names, addresses, present whereabouts and nationality of persons directly or indirectly controlling the business enterprise, except that Fritz von Opel is its principal creditor for about 12,000,000 Swiss Francs. The certificates of stock of the applicant are, I am informed and believe, made out as "bearer" shares and there is no information as to the identity of the owners of the stock.

6. The business has not since January 1st, 1939, nor is it presently affiliated with, owned by, or possessed of any interest in any other enterprise, foreign or domestic, (except as noted under Number "3" above) and except that it has a small investment in a plantation in British East Africa, a part interest in a mine in Hungary, operated under a five year lease by Hungarians, and a house in St. Moritz, Switzerland. To deponent's best knowledge, information and belief, there have been no transactions since January 1st, 1939, having as their effect any material change in its affiliations, ownerships or interest.

7. The applicant has no funded debt outstanding. It has outstanding only one class of stock.

8. The principal assets of the corporation consist of:

approximately 345,000 shares of common stock of Harvard Brewing Company

approximately 73,000 shares of common stock of Spur Distributing Company, Inc.

all the stock of Amerlagene, Inc., Westminster Industrial Corp. and Ergo Machine Works.

The other assets are enumerated in paragraph "6" hereof.

The principal assets, consisting of the shares in the aforementioned corporations, are in the United States. The remaining assets are in Switzerland.

As far as the undersigned has been informed the liabilities of the corporation in addition to those for which this application seeks to make payment, are approximately 12,000,000 Swiss Francs due to Fritz von Opel, a citizen of the Principality of Liechtenstein, who has been in the United States since May 9th, 1940 on a visitor's visa and who resides at the Hotel Delmonico, New York City.

The undersigned has no information available bearing on questions (a), (b) and (c) except as shown in the application in support of which this affidavit is submitted, from which it appears that the applicant maintains a dollar account with Adler & Co. its bankers in Zurich, Switzerland, who in turn are holding said dollar balances with Arnhold & S. Bleichroeder, Inc., investment bankers, of 30 Broad Street, New York City, in an account called "Adler & Co. re Overseas". The amount in said dollar account as of September 12th, 1941, the date of this application, was approximately $60,000.

9. No person or enterprise owns, controls or licenses the use of any patents, copyrights, machinery, processes or operating methods used by the Corporation.

10. There are no agreements between the applicant and any other persons, which have as their purpose or effect influence or control by such other persons over the business enterprise conducted by the Corporation, or by the Corporation over such other persons.

11. The applicant is a holding company and has no regular monthly income. Its expenditures consist mainly of the payment of taxes in Switzerland, as shown in Number "12" below, and also for the payment of directors' salaries and accountants' fees which amount to approximately 1,200 Swiss Francs a month.

12. The transactions or operations to be covered by the license for which application is filed are the payment of various liabilities of the applicant, as follows:

(amounts stated are in Swiss Francs)

"Cantonal Tax St. Moritz, 1940, due September 1941	2,500
National Defense Sacrifice Overseas Vermag due March 1st, 1941	5,800
House Tax St. Moritz, due October 1st, 1941 for 1940	500
Interests and Capital installment Grisons Kantonal Bank for period April 1st to October 1st, 1940	2,750
April 1st, 1941, for 6 months	2,750
Electric Power Company St. Moritz, due December 31st, 1941 for 3 months	500
Administration Fees and Bookkeeping January 1st, to October 1st, 1941	7,500
October 1st to December 31st, 1941	2,500
Cable expenses and Bank expenses to December 31st, 1941	1,200"

The above information is given by me as attorney for Overseas Finance Corporation in response to questionnaire Form TFBE-1 of the Treasury Department. Such affidavit has been prepared by me; I have no personal knowledge of

the facts set forth herein, and I allege them on information and belief; I have no knowledge of any material facts or pertinent information called for by such questionnaire that have been omitted except as specifically indicated above.

(Signed) ISIDOR KRESEL
(Signed) 15 Broad St., N. Y. C.

Subscribed and sworn to before
me this 16th day of October, 1941

(Signed) WM. PEYTON MARIN

WM. PEYTON MARIN
Notary Public, Kings County
Kings Co. Clks. No. 443, Reg. No. 3042
N. Y. Co. Clk's No. 445, Reg. No. 3M299
Commission expires March 30, 1943

Defendant's Exhibit 70

[EXCERPTS]

INVENTURENBUCH
VOM 1. JANUAR 1937

INVENTUR PR 31. DEZEMBER 1938

AKTIVA.

1. .....
2. .....
3. .....
4. BETEILIGUNGEN

Ajax Transportation Inc.			
7304 Shares			63 837 —
Spur Distributing			
73039 Shares			1 882 021 95
Harvard Brewing Corp.			
355760 Shares			1 965 000 —
Hurricane Oil Sales Corp.			
250 Shares			109 000 —
Hurricane Petrol Corp.			
2194 Shares	1 578 262 51		
Note	886 000 —		
Conto-Corrent	287 110 —		2 751 372 51
Hurricane Experimental			
Konto-Korrent			516 680 —
Oil Payments Trippit			
Konto-Korrent			1 999 090 —
Transdanubia Bauxit			
Pengö 90000.— Aktien	78 750 —		
Konto-Korrent	84 146 90		162 896 90
Vermag, A.G. Zürich			
100 Aktien			70 000 —

INVENTUR PR. 31. DEZEMBER 1939

Aktiva

1. .....

2. .....

3. .....

4. Beteiligungen

Ajax Transport Inc.		
7304 Shares		63 837 —
Harvard Brewing Corp		
355760 Shares		1 965 000 —
Harvard Brewing Corp.		
1 Certif. a/250 Sh. No. 1		109 000 —
Harricane Oil Sales Corp.		
2194 Sh.	1 578 262 50	
Note $.200 00.—	886 000 —	
Konto-Korrent $.64808.70	287 110 —	
Darlehen m/ Prov. $101500.—	449 645 —	
Experimental-Fond	400 000 —	
Separato Oil Paym. $12821.81	57 276 60	3 658 294 10
Oil Payments Trippet		
Konto-Korrent		1 810 872 35
Spur-Distributing		
73039 Shares		1 882 021 95
Transdanubia Bauxit A.G.		
Pengö 300 000.— Akt. 30% einbez.	78 750 —	
Konto-Korrent	89 453 40	168 203 40
Vetmag A.G.		
100 Aktien (70%)		70 000 —

INVENTUR PR. 31. DEZEMBER 1940

Aktiva

1. .....

2. .....

3. .....

4. Beteiligungen

Ajax Transp. Inc.

7304 Shares		63 837 —

Harvard Brewing Corp.

345760 Shares		1 878 342 —

Hurricane (i. Konkurs)

47860 Shares	ℳ 1 687 262 50	
./. Abschreibung	67 262 50	1 620 000 —
Note		886 000 —
Konto-Korrent		287 110 —
Payment & Provis.		449 645 —
" 20.II.40.		223 009 —
" 19.III.40.		267 600 —
Oil Payments		147 920 20
Experimental Fonds		400 000 —
Payments Trippett		1 718 679 50
		5 999 954 70

Spur Distributing

73039 Shares		1 882 021 95

Transdanubia Bauxit

Aktien Pengö 90,000.—	78 750 —	
Konto-Korrent	102 360 —	181 110 —

Vermag.

100 Aktien		70 000 —

INVENTUR PR. 31. DEZEMBER 1941

Aktiva

1.		
2.		
3. Beteiligungen		
Ajax Transportation Inc.		
7304 Shares		63 837 —
Harvard Brewing Corp.		
345760 Shares		1 878 342 —
Hurricane (im Konkurs)		
Guthaben lt. Beteilig. Blatt	5 059 613 55	
./. Abschreibung	159 613 55	4 900 000 —
Spur Distributing		
73039 Shares		1 882 021 95
Transdanubia Bauxit		
Aktien Pengö 90000.—	78 750 —	
Konto-Korrent	109 918 50	188 668 50
Westminster Industrial Corp.		
Beteiligung $10,000.—		43 000 —

INVENTUR PR. 31. DEZEMBER 1942

AKTIVA

1. .....

2. .....

3. BETEILIGUNGEN

Ajax Transportation Inc.

7304 Shares ..... 63 837 —

Harvard Brewing Corp.

345760 Shares ..... 1 878 342 —

Hurricane (i.Konkurs)

Guthaben lt.Beteilig.Blatt ..... 4 900 000 —

Spar Distributing

73039 Shares 1 882 021 95

Transdanubia Bauxit

Akt. Pengö 90000.—	78 750 —	
Konto-Korrent	109 918 50	188 668 50

Westminster Industrial Corp.

Beteiligung $10000.— ..... 43 000 —

INVENTUR PR. 31. DEZEMBER 1943

Aktiva

1. .....

2. .....

3. Beteiligungen

Ajax Transportation Inc.		
7304 Shares		63 837 —
Harvard Brewing Corp.		
345760 Shares		1 878 342 —
Hurricane (i.Konkurs)		
Guthaben lt. Beteiligungsblatt ...		4 900 000 —
Spur Distributing		
73039 Shares		1 882 021 95
Transdanubia Bauxit		
Akt. Pengö 90000.—	78 750.—	
Konto-Korrent	109 918 50	188 668 50
Westminster Industrial Corp.		
Beteiligung $10,000.—		43 000. —

INVENTUR PR. 31. DEZEMBER 1944

AKTIVA

1. .....

2. .....

3. BETEILIGUNGEN

a. AMERIKA.

Ajax Transportation Inc.		
7304 Shares		63 837 —
Harvard Brewing Corp.		
345760 Shares		1 878 342 —
Hurricane (i. Konkurs)		
Guthaben lt. Beteiligungsblatt		4 900 000 —
Spur Distributing		
73039 Shares		1 882 021 95
Westminster Industrial Corp.		
Beteiligung $ 10,000.—		43 000 —

b. UNGARN.

Transdanubia Bauxit		
Akt. Pengö 90000.—	78 750 —	
Konto-Korrent	109 918 50	188 668 50

INVENTUR PER 31. DEZEMBER 1945

Aktiva.

1. .....

2. .....

3. Beteiligungen:

a. Amerika

Westminster Industr. Corp.		
Beteiligung $.10000.—	43 000 —	
Ajax Transportation Inc.		
7304 Shares	63 837 —	
Harvard Brewing Corp.		
345760 Shares	1 878 342 —	
Hurricane (i.Konkurs)		
Guthaben lt. Beteiligungsblatt	4 900 000 —	
Spur Distributing		
73039 Shares	1 882 021 95	8 767 200·95

b. Ungarn

Transdanubia Bauxit		
Aktien Pengö 90000.—	78 750 —	
Konto-Korrent	109 918 50	
	188 668 50	
abzgl. Abschreibung	8 668 50	180 000 —

INVENTUR PR. 31. DEZEMBER 1946

Aktiva.

1. .....

2. .....

3. Beteiligungen

a. Amerika.

Westminster Industr. Corp.

Beteiligung $10000.— ..... 43 000 —

Ajax Transportation Inc.

7304 Shares ..... 63 837 —

Harvard Brewing Corp.

345760 Shares ..... 1 878 342 —

Hurricane (i.Konkurs)

Guthaben lt.Beteilig.-Blatt..... 4 900 000 —

Spur Distributing

73039 Shares 1 882 021 95 8 767 200 95

b. Ungarn.

Transdanubia Bauxit

Stand a/1.Jan.46 (Seite 54).... 180 000 —

abzgl. Abschreibung ..... 179 999 — 1 —

INVENTUR PR. 31. DEZEMBER 1947

Aktiva.

1. .....

2. .....

3. Beteiligungen.

a. Amerika.

Westminster Industrial Corp.

Beteiligung $.10000.— ..... 43 000 —
A.P.C.

Ajax Transportation Inc.

7304 Shares ..... 63 837 —
A.P.C.

Harvard Brewing Corp.

345760 Shares ..... 1 878 342 —
A.P.C.

Hurricane (i.Konkurs)

Guth.lt.Beteiligungs-Blatt ..... 4 900 000 —
A.P.C.

Spur Distributing

73039 Shares 1 882 021 95 8 767 200 95
A.P.C.

b. Ungarn.

Transdanubia Bauxit

(Tr.188668.50) pro memoria.... 1 —

Defendant's Exhibit 71

(Translated from a photostat of the German original)

16

Adler & Co., Banquiers Zurich, March 23, 1942

Overseas Finance Corporation Limited
Liestal

Subject: Guaranty given by the Swiss Bank Corporation, Zurich in the amount of Fr. 32,000.00 to the Hungarian Escompte and Wechsler-Bank, Budapest.

Pursuant to the telephoned instructions given by Dr. J. Henggeler on March 20 we have caused the Swiss Bank Corporation to extend until June 30, 1942 its guaranty of Swiss Francs. 32,000 to the Hungarian Escompte and Wechsler-Bank, Budapest. Because of the fact that the time limit expires on March 21, this was done by telegram.

We take the liberty of debiting you, as of today, with a quarterly commission of one half percent for the period from March 31, 1942 to June 30, 1942 in the amount of

Fr. 160. and
Fr. 7.20 Telegram expenses incurred by the Swiss Bank Corporation

Fr. 167.20

Kindly make the corresponding entries on your books.

Very truly yours,

Adler & Co. A.G.
(two illegible signatures)

Defendant's Exhibit 72

June 6, 1942

Bankhaus Adler & Cie. Aktiengesellschaft
P. O. B. Fraumunster, Zurich

In answer to your letter of the 4th inst. we would appreciate if you extended the loan for the Transdanubia Bauxit A.G., Budapest with the Schweizerische Kreditanstalt, Zurich, in the amount of Fr. 32,000, until September 21, 1942.

Very truly yours,

Defendant's Exhibit 73

(Translated from a photostat of the German original)

68

Adler & Co., Banquiers Zurich, 1 September 22, 1942

Overseas Finance Corporation, Limited
Liestal.

Subject: Guaranty of Francs 32,000.00 given by the Swiss Bank Corporation, Zurich to the Hungarian Escompte-and Wechsler-Bank, Budapest.

In accordance with instructions, given over the phone by Dr. J. Henggeler on September 19, we have caused the Swiss Bank Corporation, Zurich, to extend until December 31, 1942 its guaranty of Francs 32,000 given to the Hungarian Escompte-and Wechsler-Bank, Budapest. We have requested the mentioned bank to wire the extension in view of the expiration of the period in Budapest on September 21.

We debit your account, as of today, with the quarterly commission of 1/2 percent payable for the period from

September 30, 1942 until December 31, 1942 in the amount of

Francs 160.00 and
Francs 9.20 for telegram expenses incurred by the Swiss Bank Corp., Zurich

totaling " 196.20

Kindly, make the corresponding entries on your books,

Very truly yours,

Adler & Co.
(two illegible signatures)

Defendant's Exhibit 74

(Translated from a photostat of the German original)

80

Adler & Co., Banquiers
Zurich, November 17, 1942

Overseas Finance Corporation Limited,
Liestal.

Subject: Guaranty of Francs 32,000.00 given by the Swiss Bank Corporation, Zurich, to the Hungarian Escompte-and Wechsler-Bank, Budapest.

We have been advised by the Swiss Bank Corporation, Zurich that the Transdanubia Bauxit A.G. has repaid the loan arranged, some time ago with the Hungarian Escompte and Wechslerbank, Budapest, for your account by Fritz von Opel. Accordingly, the guaranty extended by the Swiss Bank Corporation for this loan, in the amount of Francs 31,000.00 has lapsed.

We have credited, therefore, your general account as of today

with Swiss Francs 32,000.

we have further debited the security account and credited the guaranty account with corresponding amounts.

Very truly yours,

Adler & Co., A.G.
(two illegible signatures)

Defendant's Exhibit 75

GERMAN REICH POSTAL SERVICE

076 Telegram

from 76 Budapest 99 40/38 6 1344 FK

Accepted Day	Month	Year Time	Day	Transmitted time
6	6	1449	6-6	1535
from f		through RS	to 622hl	by M

Office: Ludwigshafen Rhine 1

Dr. Edgar Giulini Ludwigshafen Rhine

Because of additional violations of law by Koranyi Mining Authority reached decision to order suspension of operations upon my request Mining Authority wishes joint discussion with you and myself wire which time within this week suitable Fritz von Opel Hotel Geilert

Korany is my request

Seen:
June 9, 1939
Foreign Exchange
Control Office,
Ludwigshafen

Defendant's Exhibit 76

GERMAN REICH POSTAL SERVICE

090 Telegram
from 90 Budapest 80 35/34 7 1202 FK

Accepted			Transmitted	
Day	Month	Year	Day	Time
7/16		1345	7/6	1356
by F through Hal			to Giu	by Ne

Office Ludwigshafen (Rhine) I
Giulini Lu Rh

[Receipt Stamp:
Division .....
Rec'd June 9, 1939
Handled .....]

received yesterday's wire kindly advise whether shipments from Edgar and Margot mines actually are made to your firm since otherwise because of non-payment of fees and other contractual violations am compelled to market shipments immediately Opel

Seen: June 9, 1939
Foreign Exchange
Control Office,
Ludwigshafen
Initial

Defendant's Exhibit 77

Dr. Edgar Giulini July 19, 1939

Dipl. Ing. Fritz von Opel
presently Jagdhaus Wilhelmsruh
nr. Korbecke, Kr. Soest, Westphalia

My dear Mr. von Opel,

Having returned from my trip I hasten to reply to your letter of the 12th inst. receipt of which I had confirmed to you through my office already on July 14. We, too, have been informed in the meantime about the development of the conditions in the mines and with Koranyi. We had once again sent Mr. Lucovnik to Hungary; meanwhile, however, he left, since, due to the unsettled conditions, it was not possible for him to find a way to maintain productive work in the mines. The Balazs Group also, which had given financial assistance to Mr. Koranyi and which was willing to continue such assistance, now seems to have withdrawn in view of the unfavorable statements which you had made to these gentlemen in Budapest at the time regarding the person of Mr. Koranyi.

I am not in a position to form a clear picture of your present attitude towards Mr. Koranyi since I noticed from a newspaper article that, in contrast to your previous aggressive intentions, you have withdrawn your civil suit against Koranyi. It seems certain to me, however, that a continued exploitation of the mines under Koranyi is impossible. Therefore, in order to make any progress in this matter, other ways must be found to avoid any misunderstanding. I believe it proper to present to you once more briefly the attitude of my firm in this entire situation.

My firm maintains that in this whole matter it went to the limits of the possible, if not beyond. It closed the delivery contract with Koranyi and, by making available to

him large advance payments as well as technical experts, had given him every opportunity to insure orderly operation of the mines. My firm is deeply disappointed by Mr. Koranyi's actions in violation of the contract, and therefore cannot, and furthermore in view of the foreign exchange regulations would be unable, to assume any additional financial guarantees. Thus, if the operation of the mines is to be resumed, the most logical step in the opinion of my firm would be to have your company take over their operation.

You yourself have expressed this idea, making it contingent, however, on the condition that quantities of bauxite far in excess of the Koranyi contract be purchased at the terms and prices of the Bauxit Trust. In order to follow up your proposal, will you please furnish me in detail the prices and other terms at which your firm would deliver. May I ask you right from the start to keep your requirements as low as possible, for increased bauxite imports from Hungary should definitely give us a certain equivalent for our financial support of Koranyi.

If there are no objections from the point of view of the law, we would agree in principle to transfer our mining rights to your company. This could be accomplished within the framework of a general agreement.

Looking forward with interest to further news from you, I remain, with best regards,

Very truly yours,

[sgd] illegible initial

Defendant's Exhibit 78

(Translated from the German Original)

FRITZ
VON
OPEL

Presently Kempen/Sylt, Norderkliff House
Tel. Westerland 772

July 31, 1939

Giulini Bros.
Attention Dr. Edgar Giulini
Ludwigshafen on the Rhine

My dear Dr. Giulini,

I regret that I delayed answering your kind letter of July 19 for a few days because, unfortunately, Dr. Salusinszky, recently met his death in an automobile accident. Moreover, Ministerialrat Tassonyi was leave and absent from Budapest.

Koranyi.

Concerning the newspaper item mentioned by you Mr. von Krausz wote me as follows: "The newspaper item was erroneously interpreted. Dr. Salusinszky never withdrew the lawsuit against Koranyi but merely stayed it pending the duration of the agreement with Koranyi. It is possible to continue the proceedings at any time. At the present time, several criminal charges have been filed against Koranyi and I have been told that he is a steady guest at the Police Office."

I further understand that the mining authorities have ordered all owners, i.e., Lucovnik, Norhianszky and Trans-

danubia to pay the overdue wages and payments on government charges owed by Koranyi. The mining authorities are particularly interested in the payment of the wages. The half share of wages charged to me is said to be 1,598.31 pengoes. Allegedly, Horianszky has already paid the wages which were in arrears and I believe that we cannot avoid payment without risking levy of execution or at the very least, the thorough displeasure of the mining authorities.

Shipments.

Upon receipt of an order for about 150,000 tons of which annually 30-40,000 tons would be shipped,—doubling the annual quantity being possible if new mines are opened—I could make shipments at a price of RM 13.20 per ton f. o. b. car or ship Gyoer. Such shipment would be made on the basis of 56% aluminum, 3% silica, and [illegible]% humidity, the price to be increased or reduced by RM 1.00 for each 1% of an additional or lesser amount of aluminum, and to be increased or decreased by RM 2.00 for each 1% lesser or additional amount of silica. Carloads containing less than 55% aluminum or more than 3% silica will not be shipped.

As to the assumption of Koranyi's liability to which I declared my readiness within the framework of a long-term agreement, the simplest way would be for Transdanubia to undertake that liability towards you, of course, upon assignment of your rights against Koranyi. We are examining at the present time whether that is legally possible, and in particular whether such a step would prevent the re-emergence of Koranyi.

If a solution is found, and I will report to you about that within a few days, I propose that Transdanubia will reimburse you, on a continuing basis, in the amount of

[Note in handwriting: "Is higher"]

RM. 0.60 per ton until the entire liability of RM. 160,000.00 is paid off.

The basic price of RM 13.20 mentioned to you hereinabove is substantially below the price charged by the trust and, in my opinion, will not include the profit margin of 15% considered as adequate by the Mining Authority. Should that profit margin be reached, however, I am ready to pay off the Koranyi liabilities at a correspondingly faster rate. If, upon examination of the legal aspects of the question, you decide to assume the liabilities of Koranyi mentioned above I shall be willing to advance the corresponding amounts; you may repay them by way of preference, from the reimbursement fund. If you agree with the above proposals which, I believe, would constitute a final settlement of the matter satisfactory to all concerned, please advise me, at an early date, and state the quantities which can be supplied within this year. You can also reach me at any time—best by making a person to person call—by No. Westerland 772.

I remain, with best regards,

very sincerely yours,

(sgd.) FRITZ VON OPEL

Defendant's Exhibit 79

(Translated from an initialed copy of the German original)

September 8, 1939

of
Giulini Bros.
G.m.b.H.
Ludwigshafen
on the Rhine

Mr. Fritz von Opel,
Graduate Engineer
Presently Hotel "Dolder"
Zurich

Dear Mr. von Opel:

At the request of Dr. Edgar Giulini who had urgently to go on a short trip, I should like to inform you of the following telegram which we sent yesterday to Mr. Lucovnik, engineer, and to our bauxite mine:

> "Have Lucovnik extend time limit set by Budapest Mining Authority in view of general situation and to declare agreement to Sükkösd"

This will show you that we also have caused Mr. Lucovnik to request from the Mining Authority in Budapest an extension of the time limit fixed for September 10 and that we have also agreed with the appointment of Dr. Sükkösd as joint representative.

According to our information you also agree to the appointment of this agent.

At the present we are occupied with getting full control of the mining rights assigned to us in order to clear the way for further arrangements. We shall then again refer to this matter.

With best regards and Heil Hitler,

sincerely yours,

(sgd) F—

Defendant's Exhibit 80

(Translated from the German Original)

FRITZ
VON
OPEL

Presently Zurich,
Grand Hotel, Dolder

September 11, 1939

Mr. Heinrich Frick
of Giulini Bros. G.m.b.H.
LUDWIGSHAFEN on the Rhine

My dear Mr. Frick,

Thank you very much for your kind letter of September 8. The gentleman whom the Mining Authority has been considering is not Dr. Sükkösd but Oberbergrat [Mining Official] Dr. Somogyi. I request you therefore, to inform your Budapest agent accordingly. I have already declared my agreement to the appointment of Dr. Somogyi.

The most important question, of course, is what is being done about resumption of production. From the reports of my agents I gained the impression that the Mining Authority more than ever insists on continuation of production and, conceivably, may expropriate the mining rights if we do not comply with their wish.

If you are not interested in the shipments it is an easy matter to sell the production elsewhere since everywhere, also in Switzerland, there is a shortage of bauxite because of the war and the blockade. Unless I hear from you to the contrary I assume that you agree that the production may be sold to third parties.

Please give Dr. Giulini my regards,

I remain,

with German greetings
Your

Defendant's Exhibit 81

(Translated from an initialled copy of the German Original)

Mr.
Fritz von Opel
At the present
Grand Hotel Dolder
Zurich

9-11-1939 Purch.Rawmat.Fr/bg Sept.16.1939

Istvan Koranyi, Budapest

We acknowledge with thanks receipt of your letter of September 11, addressed to the individual signing below on the right side. We note from it that the gentleman under consideration by the Mining Authority, Budapest is not Dr. Sükkösd but Oberbergrat (mining official) Dr. Somogyi. We immediately got in touch with our attorney concerning this matter in order to make, if necessary, the correction.

We share your view that, under present conditions the interest and demand for Hungarian bauxite will increase. This situation will also afford to us the opportunity of overcoming the present difficulties. We are also of the opinion that, in view of the mobility which you have as a German residing abroad, and in view of the funds at your disposal, you would do meritorious service for the raw-material supply of the German aluminum industry and the entire war economy of Germany if you would tackle with all your energy the resumption of production in the mines. We ourselves are by all means interested in a resumption of Hungarian bauxite deliveries in view of the present situation and, depending on the possibilities

of production would also urge that the Vereinigte Aluminiumwerke (United Aluminumworks) to whom we sent just recently a sample from the previous Koranyi-shipments and possibly, also the Martin Works should take a share of the deliveries.

Please advise us as immediately, if possible, of your reaction to this suggestion.

Very truly yours,

Heil Hitler,

GIULINI BROS. G.M.B.H.
(initials)
G. F.

Defendant's Exhibit 82

(Translated from the German Original)

TRANSRADIO—TELEGRAM

zuerich 29/27 18 152 1523 Bros.Giu.Lu

your letter 16th september as before stand by my offer july 31 upon receipt of order immediately ready to travel budapest for purpose of starting production opel

Defendant's Exhibit 83

(Letterhead of Bayer & Clauson, New York)

August 13, 1936

Dr. Hanns Frankenberg,
Uebersee Finanz Korporation, A.G.,
Zurich, Switzerland.

Dear Dr. Frankenberg:

We have received your letter of July 21, 1936 and based upon the figures with respect to traveling expenses and legal fees, have completed the Federal income tax returns of Uebersee Finanz Korporation, A. G., for the year 1935. We are enclosing herewith the original and duplicate copies of the regular income tax return and the personal holding company tax return. The duplicate copies are for your files. The original copies should be signed by two officers and sworn to before the American consul, and should have the corporation's seal affixed. Upon return to us, we will complete our necessary affidavits and will file them before the required date.

As you were informed, these returns were due for filing June 15, 1936, but we have obtained an extension until September 15, 1936 and believe that we can obtain a further extension until December 15, 1936. Based upon the returns as prepared, there is no regular income tax to be paid. The personal holding company tax of $28,736.64 is payable in quarterly installments, and if the return is filed December 15, 1936, it would be necessary at that time to pay three-fourths of the tax together with interest at the rate of 6% on the quarterly installments due June 15, 1936 and September 15, 1936.

We are also in receipt of your letter of July 28, 1936 with respect to the question of doing business in the

United States. Since we were informed by you in June that Uebersee is no longer a personal holding company, we will eliminate that tax from our consideration. The new tax law does not fully define what constitutes doing business in the United States, but does provide that it does not include the effecting of security transactions in the United States. The law itself, therefore, does not provide an answer to the question of whether the holding of a total or a majority of the stock of an American company by a non-resident foreign company would constitute doing business in the United States. There have been practically no rulings on this general subject and the only one with respect to the present question states that "the mere investment by a foreign corporation of any of its funds in United States securities does not constitute carrying on or doing business in the United States." If the foreign corporation does not exercise its control of the United States company in the United States, does not have an agent or agents act on the board of directors, or as an officer, and merely executes proxies from abroad for stockholders' meetings, it could certainly be argued that the foreign corporation is not carrying on business in the United States. It is possible that the Treasury Department would contend that the possession of control of a United States company in itself constitutes doing business in the United States. However, our opinion is that the answer would be based on the facts in each case, that the mere possession of control does not necessarily involve the carrying on of business, and that it would depend upon whether the foreign corporation by its acts exercised its control in the United States.

As a non-resident foreign corporation not doing business in the United States, Uebersee would only be subject to a flat tax of 15% on interest received and 10% on the full amount of dividends received. As a foreign corporation doing business in the United States, it would be subject to a capital stock tax and an excess profits tax, if

any, and to a regular income tax of 22% on its net income from interest, 15% of any dividends received, profits from securities sold in the United States, less its American operating expenses. In neither case would Uebersee be subject to the present tax on undistributed profits. Under the circumstances where the amount of dividends received was relatively large compared with the other income, less tax would be paid by the foreign corporation if it had an office or was carrying on business in the United States.

For example; take the case of a foreign corporation having interest income of $50,000.00, domestic dividends received of $150,000.00, and American operating expenses of $10,000.00. Under the first case it would pay a tax of $22,500.00, consisting of $7,500.00 on the interest and of $15,000.00 on the dividends. Under the second case it would pay an income tax of $13,750.00, 22% of its net income determined as follows:

Interest income	$50,000.00
Domestic dividends received (less credit of 85% thereof)	22,500.00
Total	$72,500.00
Less—American operating expenses	10,000.00
Net taxable income	$62,500.00

In addition, under the second case, it would have been necessary for the corporation to have declared a capital stock value of $625,000.00 entailing a capital stock tax of $625.00 in order to avoid an excess profits tax on its net income of $62,500.00, which tax ranges from 6% to 12%.

The question of the liability of the stockholders of the foreign corporation for United States income taxes on any dividends paid to them by such corporation, would also have to be considered, but the section of the law which

states that dividends received from a foreign corporation, which derives more than 50% of its gross income from sources within the United States, is income from the United States, makes no distinction between resident and non-resident foreign corporations. The present law requires any corporation paying a taxable dividend to a non-resident alien to withhold a tax of 10% of such dividend. As a practical matter with respect to the enforcement of this section of the law, it would not seem to make much difference whether Uebersee was construed as carrying on business in the United States or not. If attempt was made at enforcement, which is not now anticipated, the Treasury Department in either case would attach such assets as were in the United States and would undoubtedly place restraining orders on the American subsidiary companies.

Based upon all of the foregoing, it would appear that it might be advantageous for Uebersee to consider itself as carrying on business in the United States, but without having an office or domicile here, provided that it is going to have a relatively large amount of dividend income as compared with its other income and that it is not going to have large profits from the sale of securities in the United States. In the event of the occasional sale of any of its holdings, it would be necessary to be very particular that such sale was effected and consummated abroad. Under such a set-up it would be necessary for Uebersee to file capital stock tax returns as doing business in the United States, declaring a value sufficiently high to avoid paying any excess profits taxes.

We trust that the foregoing will furnish you with some additional information on the subject of United States taxes, and we are looking forward to hearing from you further in the matter.

Yours very truly,

(Signed) Bayer & Clauson

Defendant's Exhibit 84

TELEGRAM

New York, June 18, 1936

Bankadler

Zurich

Agreed. Cable accomplishment placements

Frankenberg

Defendant's Exhibit 85

RCA

RADIOGRAM

Received at 102 W 56 Str., New York, June 17, 1936

Zurich

Frankenberg

Pierre Hotel New York

Bankgesellschaft agrees to retention dollars and guaranty of margin of $20,000 on the part of Adler subject to definite contractual settlement after your return. Stop. Immediate placement possible. Cable

Bankadler

Defendant's Exhibit 86

MEMORANDUM FOR DR. FRANKENBERG

Re: Overseas

In pursuance of our memorandum of the 19th inst. we enclose:

1. Copy of our letter of June 20 to Dr. Henggeler,

2. copy of Dr. Henggeler's letter of June 22 to Adler, and

3. copy of the letter by the Bankgesellschaft of June 19 to Dr. Henggeler,

4. copy of the letter by Dr. Henggeler of June 22 to Bankgesellschaft,

5. copy of the statement furnished to the Bankgesellschaft, called "confirmation" (Bestaetigung) in letter No. 4.

In the absence of Dr. Henggeler we have asked the Bankgesellschaft to enlighten us regarding the word "actual" (effektiv). The Bankgesellschaft answered us that it should be understood in the meaning of section 756 of the O.R. (Law of Obligations). This section reads as follows:

"If a draft is made out in a currency which is not in circulation at the place of payment or in an account currency (?), the amount shown on the draft may be paid at the time it becomes due in the local currency, unless the maker has expressly stipulated payment in the currency named in the draft by the usage of the word "actual" (effektiv) or by a similar term."

6. copy of the letter of June 23 by Adler to the Bankgesellschaft,

7. copy of the letter of June 18 by the Bankgeselischaft to Dr. Henggeler. The Bankgesellschaft informed us tonight that the names of the stockholders will be made known to Dr. Henggeler tonight. Thereupon we cabled to Dr. Frankenberg as follows: "Will probably be able to cable names of stockholders tomorrow." Zurich, June 23, 1936.

[Cable of June 23, 1936 by Dr. Frankenberg

"Names need not be furnished", Telephoned (By Dr. Borch) to Henggeler. June 28, 1936]

Defendant's Exhibit 87

(Translated from an initialled copy of the German Original)

Copy

[3]

Schweizerische Bankgesellschaft

Management Zurich, June 19, 1936.

Dr. J. Henggeler, Attorney,
Zurich,

Dear Doctor,

We acknowledge receipt of your letter of the 18th inst. regarding the Overseas Finance Corporation, which contains the supplemented draft agreement. It finds our approval, except that in the matter of the dollar transfer, we.

would like to see the word: "actual" included, in view of the present international situation; since in our opinion the purchasers of the shares, or later we in our capacity as the bank, as well as later on at the repurchase, the Frima Verwaltungsanstalt, Vaduz would have to furnish actual dollars for capital and dividend. Should the agreement already be signed, the "actual" clause may be included in a separate letter. We believe that this would be to the advantage of both parties. Furthermore, under section 2 in the purchase agreement should be included that the transfer tax stamp, not only the one for the sale but also the one for the option, charged to the seller, that is to the Frima Verwaltungsanstalt, Vaduz. Under section 3, fourth line, the supplement "free from the Swiss coupon tax" is missing.

We are looking forward to receiving the agreement for signature, and meanwhile we shall make the necessary preparations with the buyers. We have 14 to 16 persons and firms in prospect, to whom we intend to allot differing amounts, so that the set-up does not appear too artificial. We are prepared to meet with you in the near future for the final clarification of the correspondence and the figures connected with it.

As you may recall, we have provided for the Bank in Baden to act as agency holding the shares. A short agreement with this bank would have to be concluded, stipulating a modest trusteeship * fee.

Very truly yours,

SCHWEIZERISCHE BANKGESELLSCHAFT

* As provided for in Convention IV of the Schweizerische Bankvereinigung, that is, 50 cents per Fr. 1,000 of capital.

Defendant's Exhibit 88

November 14th, 1939

Air Mail

Registered.

Messrs. Leslie, Strachan Co.
Chartered Accountants,
Standard Bank Chambers,
P.O. Box 45,

Dar es Salaam.

Dear Sirs,

We are in receipt of your letter dated October 23rd and beg to hand you enclosed certificate from the Union Bank of Switzerland, Zurich, duly legalised by the British Consulat General, Zurich, which you may present to the Custodian. We assume that this certificate will induce the Custodian to convince himself that all holders of our shares are of Swiss nationality. At the same time he may gather from it that Mr. von Opel is not a shareholder of our company. For these reasons we presume that the release of our property will take place in due time.

On this occasion we wish to state that at the time we have assigned our claim against the estate of the late R. N. Clark to Messrs. Adler & Co. Société Anonyme, Zurich. You would oblige by informing us about the present situation of this matter as well as when the entry of this amount might be expected.

Thanking you, we are, dear Sirs,

Yours faithfully,

Defendant's Exhibit 89

(Letterhead of Leslie, Strachan & Co.)

C.34/9849

Dar es Salaam,
Tanganyika Territory

23rd October, 1939

Messrs. Overseas Finance Corp. Ltd.,
LIESTAL,
Switzerland.

Dear Sirs,

We are obliged for your letter of 6th October which reached us last week by airmail.

The certificate from the Union Bank of Switzerland has been submitted to the Custodian of Enemy Property here. Our translation of the German is as follows: "97 parts are lying with us and are in Swiss possession" and the Custodian points out that the actual ownership of the shares is not stated.

Would you please therefore obtain from the Bank a similar letter giving the names of the actual holders of the shares at 3rd September 1939 and their nationality in each case. Should the 97 shares, or a majority of them, be held by a company the Custodian will eventually require similar information regarding the holding company.

It is believed locally that Mr. von Opel is a German subject and a majority shareholder in your company and the Custodian requests full information regarding his relation to the company.

At the same time we could point out that your estate has not been confiscated. The Custodian, following the internment of the manager, placed watchmen and care-

takers on the estate to safeguard the assets. These, he will be pleased to withdraw on receipt of evidence that the estate belonged at 3rd September last to neutral subjects.

It will assist us if you will include an English translation of any certificate obtained from the Bank.

We are informed that Mr. Tessin was a member of the Nazi party and although some of the internees have been released, there is no immediate possibility of his being released on parole.

Yours faithfully,

(Signed) LESLIE, STRACHNAN & Co.

Defendant's Exhibit 90

TRANSDANUBIA BAUXIT R.T.
TRANSDANUBIA BAUXIT A.G.

BUDAPEST, February 4, 1942
V Bathory-utca 5

Giulini Bros., G.m.b.H.
LUDWIGSHAFEN ON THE RHINE

Subject: Bauxite
Your Div'n and Initial:
Purch. Raw Mat. Fd/Me.

Referring to your letter of January 23, 1942, we wish to advise you as follows:

If we deduct the 1566.9 tons finally settled in lot 1 from the 1608.1 tons shipped in October, the difference is 41,200 kg instead of 56,900. If this weight is added to the 1608.1

tons the weight to be settled in lot 2 properly amounts to 1649.30.

The quantities established by you for the November shipment fully agree with the weights set forth in the bills of lading; on that basis the full weight of lot 3 is 1,189,400 instead of the 1,189,350 kg claimed by you.

The difference in the December shipment (Lot 4) is only 50 kg. and the proper weight is 617,000 kg. We have gratefully noted your correction in that respect.

We have most rigorously urged our plant management in Zalahalap to handle the advices immediately, and in the promptest fashion. These mistakes are solely due to the fact that substantial changes occurred in the personnel of our plant management.

Very truly yours,

TRANSDANUBIA BAUXIT AKTIENGESELLSCHAFT

(sgd.) SOMOGYI DR. TIMAR

Defendant's Exhibit 91

(Translated from an initialled copy of the German Original)

Fritz von Opel, presently
Grand Hotel Dolder
Zurich

T.9-18-1939 Dr.Edg.G./Bg Sept. 19, 1939

Istvan Koranyi, Budapest

Dear Mr. von Opel,

We acknowledge with thanks receipt of your telegram which reads as follows:

Your letter 16th September as before stand by my offer july 31 upon receipt of order immediately ready to travel budapest for purpose of starting production Opel

We noted that you stand, as before, by your offer of July 31 and thereupon promptly got in touch with the V.A.W. and the Martin Works in order to make it possible, by their participation in the receipt of deliveries, to give you a total order up to 150,000 tons. We have communicated to both firms the prices for shipment and the conditions of your offer of July 31 and, upon receiving their reply, will immediately refer to the matter again. If you should plan to leave Zuerich within the next few days we should like to ask you through which address mail will reach you most quickly.

We greet you with

Heil Hitler!

GIULINI BROS G.m.b.H.

(initials) G F

Defendant's Exhibit 92

(Translated from an initialled copy of the German original)

Fritz von Opel
presently
Grand Hotel Dolder
Zurich

Purch,Rewmat.Fr./Bg Oct.4,1939

Istvan Koranyi, Budapest

Dear Mr. von Opel:

We confirm our letter of September 19 and regret to be unable today to give you any final statement concerning your offer of July 31, 1939.

As a result of our efforts to induce also the firms of V.A.W. and Martin Works to participate in the receipt of bauxite deliveries we have, in the meantime, first heard from the V.A.W. that they have no interest in such participation because of the price which they say is too high while the Martin Works for the time being, has advised us of no more than its agreement in principle to a participation in accepting bauxite shipments. Thereupon the three firms have agreed to meet again in the immediate future for a discussion of the bauxite problem. We will then give you further information.

We will again refer to the question of a joint representative if we have information about the matter from Budapest.

We greet you with

Heil Hitler

GIULINI BROS. G.m.b.H.

(initials) G F.

Defendant's Exhibit 93

(Translated from the German Original)

FRITZ VON OPEL

Dolder, Zurich, October 28, 1939

Mr. Heinrich Frick
Hoeferstr 2
Mannheim

Dear Mr. Frick,

Since my trip to the United States is impossible at the present time I intend to go to Hungary, instead. I would be grateful to you, therefore, if you would let me know what result the conference of your firm with the two other refineries has had.

I intend to stay for several weeks in Hungary, beginning November 10 and would be very pleased if, on this occasion, we could meet in Budapest.

I remain,

Sincerely yours,

(sgd) FRITZ VON OPEL

Defendant's Exhibit 94

(Translated from an initialled copy of the German original)

Mr. Fritz von Opel
presently
Grand Hotel Dolder
Zurich

— 10-28-1939 Purch.Rewmat. Fr./Bg Nov. 4 1939

Istvan Koranyi, Budapest

Dear Mr. von Opel;

We acknowledge receipt of your letter of October 28 addressed to the individual signing on the right which has just now reached us. We advise you in reply that, both, the Martin Works and our firm are disposed, now, as they were before, to accept, bauxite shipments from the Koranyi mines whereas the V.A.W.—as we informed you already—cannot see their way to take part in this deal because of the price which they say is too high.

A substantial change in the situation, however, has occurred as a result of the bankruptcy of Korany which, we assume is known to you. It is therefore a fortunate co-incidence, that because of your postponement of your trip to the United States you now intend to stay for several weeks in Hungary in order to be able to observe the development of the matter on the spot.

Please advise us whether you will again stay in the Hotel "Gellert" so that, if necessary, we can get in touch with you by letter since a trip to Budapest will not be possible for us in the immediate future.

Heil Hitler!

Giulini Bros. G.m.b.H.
(initials) G. F.

Defendant's Exhibit 95

FRITZ
VON
OPEL

Grand Hotel Dolder, *Zürich*, November 10th, 1939.

Mr. Walter E. Guyette
Harvard Brewing Co.
Lowell, Mass.

My dear Walter,

This is to acknowledge receipt of your letter of Sept. 30th which is so full of pleasant facts and figures that it is really outstanding among the news one is used to get nowadays. The last weeks have been very stormy indeed for everybody in the old country, and there were so many things to arrange and to care for that I had to restrict all communications to U. S. A. to a bunch of cables which I exchanged mostly with Mr. Ulrich.

It was therefore comforting for me to know you at the steering wheel of the Harvard ship, clearing out in time of dangerous storm-zones and paddling along now in a calm sea and sunshine.

I was very sorry indeed not to have been able to pay you my regular visits but until September my broken leg was not yet fit for a longer trip and then in October I twice had to cancel my reservations on account of still more urgent matters. I am now on the way to Hungary to speed up production in my bauxit-mine but I hope to be home in St. Moritz for Christmas.

It was my idea to bring you personally an invitation to St. Moritz for any time in January or February but I am afraid now that you, as far away American and not used to war as we are, might look upon an invitation to

Europe more as a liability instead of an asset. In my opinion of course there would be no danger at all, using an Italian liner to Genua, from where it is a short ride of about 8 hours to St. Moritz. Food is not rationed yet in Switzerland, nor is liquor and wine, neither girls nor sun. So I could guarantee you an all round pleasant stay, whether you want to come alone or bring Mrs. Guyette along. In case Italy would go into war, or Germany would start fighting England with the throttle wide open, then naturally you would better postpone your visit to the first winter after the war. You have to make your own decision but please keep in mind that it would be all too pleasant for me to see you after so long a time and to discuss with you in details all the problems Harvard is confronted with.

I don't know if you remember the last meeting in Mr. Clauson's office when we tried to calculate the probable barrelage of the past season. My figure has been by far the highest viz. 185'000 and I am now, as you surely believe, not only proud of my exact calculation but even more proud of all the men under your leadership who managed to pass this figure by 300 barrels. I think it would be worth while if we all, you, Ulrich, Protzman, Clauson and I would do some calculating again as to the barrelage of the coming season and then use the average so arrived at as basic figure for the budget. As my guess in the "calculation-competition" is, I want you to enter the figure of 203'000 barrels (I hope you are not afraid of the high expectations.) I earnestly believe that it would be much more practical to have the budget figured on 200'000 barrels than on a lower figure which we are sure to overshoot. The gone years budget showed 50'000 $ profit on a production of 150'000 barrels what means that the "breaking even point" lies at around 135'000 barrels. In all circumstances it should be left there or even brought down by virtue of all experience we gathered in the meantime.

As to the earnings they look less favourable than the sales. I did not yet receive the statement per September 30th but I figure the total earnings for the fiscal year to be around 165'000 $. This figure is, as I have to confess, exactly 25,000 $ lower than I expected, due to the fact that the 35,000 barrels above the budget did not bring 4$ net profit per barrel, as I assumed, but only 3.25 $. Assuming the same rate of expenses for next year (based upon 200'000 barrels), the earnings would be 222'000, whereas, according to my former calculation, it should be 262'000.—.

As soon as the final figures are available, I am going to analyze them but as there was no change in cost of material, either I must have been wrong in calculating the savings realizable by plus-production or some of the departments did not succeed in getting the full amount of savings I figured with.

Your assistance in solving the problem I am puzzled with is the following:

In last year's budget we figured with 150'000 barrels and net earnings of 50'000 $, each barrel of the basic production being charged with definite amounts of different expense items. The moment the production runs above the basic figures, the rate of expenses changes, for instance the net cost of material per barel produced will be as high as before or will remain 100% of the basic costs.

On the other hand general and administrative expenses, being already absorbed by the basic production, will be null percent i.e. can be disregarded at all. In between lie different items f.i. delivery which is reduced to say 20%, it being nearly equal if a truck unloads 2 or 3 barrels at the time. Cooperage on a big scale ought to be more economical and so other items. In other words, it must be possible to calculate exactly the savings of plus-production by analyzing each expense as to its influence on same. It is hard to explain in a few words what I mean but I hope you underand the principal I am after and I feel that

with these figures at our disposal we should better than now be able to check the expenses within the different departments.

There's one more question left. I was very much embarrassed to see the prices of all farm products shoot up, whether such a rise is unjustified, as I believe, or not, I don't know yet to what an extend hop and malt went up, or to put it better, how crazy the people got who sell it. I hope anyhow that you stuck to the plan we agreed upon viz: to have so big a stock and forward orders on hand to cover our supply for at least 1 1/2 years. Please let me know some details.

While having this letter typed I receive your letter of October 30th. I fully share your views regarding Arthur Sullivan and his law-firm and I am convinced that the new arrangements you made, will work out satisfactory to all concerned. The promotion of Hughes Sudall to the position as secretary must be applauded in every respect, as he already did the work and he is able and willing to render to the company his best services.

Sullivan's resignation however leaves the question open of who in the future is going to look after the special problems he was supposed to solve. You certainly remember the numerous discussions we had regarding our policy in respect to the import of beer into the state of Massassuchets. I mentioned five different ways, all of which should lead to an increase of Mass. production against the out-of-state breweries:

1. I suggested one or the other form of import-tax and while I personally had some doubts as to its possibility, Sullivan felt that it should be possible to have a 1 or 2 $ tax per barel imposed upon the imports.

2. I suggested that the commonwealth should create a kind of "health-certificate" with the effect that all breweries selling in Mass. should be checked monthly

by Mass. commissioners in respect of the sanitary conditions and their production facilities. The cost of such control should be based on each single brewery's capacity and the time used for this inspection. My idea was that this would place an extra burden upon the out-of-state competitors, most of them being large and far-away breweries.

3. We discussed the discrimination against Mass. products, caused by our paying taxes in advance, whereas the out-of-state brewers were, in many cases, not taxed at all on account of their distributors or wholesalers having gone broke in the meantime.

4. I mentioned the unfair competition i.e. the unjustified price-cutting, masterfully engineered by some out-of-state brewers of lesser reputation for whom our commonwealth is just one more dumping ground. Such a practice is undoubtedly illegal and I told Sullivan to go after these boys and establish a test case as quick as possible, what he promised to do.

5. We discussed the engagement of a first class lawyer or political talent by the Mass. brewers association, who should work along the lines mentioned and who, furthermore, should look to a really brotherly unification of all Mass. brewing interests. I suggested, as you certainly remember, some joint advertising which should emphasize the importance of the Mass. brewing industry to all trades and the heavy losses especially to Mass. labour and wage earners, caused by the import of beer.

The underlying idea of all these suggestions was that half of the supply of beer consumed in Mass. comes from out-of-state. It always seemed unwise to me to fight our neighbours in some or the other dirty way (Hofacker's

famous green ale) instead of uniting our efforts and licking the enemy where he really is viz. out-of-state. There's plenty of room in Mass. for all Mass. brewers and we all could run with full capacity if we only succeeded in reducing the common enemy's share in the mass. market from 1/2 to 1/3. For Harvard it would mean a rise from 200'000 to 266'000 barrels, or based on the present earning power—a net-income of 430'000 $.

You see it is worth while to go after these things and it drove me mad that so far Sullivan did not show any results. It is up to you now to choose or supervise the right man, able and willing and full of energy to do the trick.

It is most welcome to me that you have been elected to the board of the U. S. Brewers Association, this being not only a well served honour to the brewery but also to yourself. It means even more to the association itself: I doubt whether there is another brewer in the states who can compare in good looks to our president!

Now at least a few words about the preferred shares matter. Although sharing your views in most of the points, I cannot agree to, that subscription and sale of the preferred stock was in any way against the interest of the holders of the common stock. Every single stockholder was entitled to subscribe and to buy his equal share what however was not done by virtue of the fact that, as you mention in your letter, the conditions in the brewery were quite uneasy and the common stock quoted far below par at the respective time. I am therefore quite satisfied that the mere misunderstanding is settled, as the firm of Bleichroeder & Co. and all office partners were very helpful to me in a lot of respects.

Now to the last paragraph of your letter. When I saw the war coming and when I thought of the ill feelings or even the hate it might bring along towards Germany, I felt I should not endanger the interests of the Overseas Finance Corporation and the even more important interest of Harvard itself, by continueing in my position espe-

cially as director of Harvard. Today however things became different. After 10 years of residence in Switzerland, I was able to acquire another nationality. I felt myself obliged to do so in the endeavour of protecting the interests of all people and companies in your country and abroad I am connected with and you therefore can rest assured that there is not the slightest change in our relationship. As I already cabled you I will be always at your disposal either for the company or for you personally.

As I might not be able to write to you in time for Christmas, I take this opportunity to send you and all your men, especially Dr. Jurst, Mr. Protzman, Mr. Dionne and Mr. Gross my best wishes. Shortly after Xmas I hope to have the pleasure of seeing you in St. Moritz.

I remain, dear Walter, with best personal regards,

Yours sincerely,

FRITZ V. OPEL

Defendant's Exhibit 96

(Translated from the German original)

FRITZ
VON
OPEL

St. Moritz, House Kulm
April 13, 1940

Dr. Edgar Guilini
Giulini Bros. G. m. b. H.
Ludwigshafen on the Rhine

Dear Dr. Guilini:

I take the liberty of restating in writing the contents of our telephone conversation which we had this morning. According to Dr. von Krausz, the Mining Authority, at

the beginning of this week, has objected to the start of production on the ground that we were required to pay not only the overdue wages amounting to about 3000 pengoes a payment to which both of us had long agreed but, in addition, the wages for two weeks' notice in the amount of about 4400 pengoes. Moreover, from the Korany are unpaid social insurance contributions and the constantly disputed claims of the property owners are due. Mr. von Krausz believes to be able to satisfy the social insurance with 1500 pengoe and the property owners with 3000 although they ask much more; accordingly, a total of 8900 pengoes would have to be additionally paid.

Although our agreement clearly provides that we will pay these overdue fees one half share each, I thought it nevertheless correct to advise you of the matter and to obtain your consent to the payment. It goes without saying that we will take no action without informing Dr. Ballay appropriately.

I further gratefully noted that you will see to it that funds are made available in the Clearing procedure as quickly as possible since we cannot ship without being paid because the Hungarian banks refuse—a thing which I cannot understand—to advance pengoes on claims payable in marks. In view of the impossibility of transferring foreign exchange from Hungary, particularly in view of the worsening balance of payments of Hungary, you will understand that I would like to avoid to have excessive foreign exchange funds frozen beyond those already invested. Of course, I share your opinion that, within a few weeks, the entire dealings will run smoothly so that, in the long run, both of us, as I hope, will derive pleasure from our business association.

On April 16, I am leaving on the Conte di Savoia for the United States where you can reach me, if necessary, at the address set forth below. If I can render you any service in the United States in business or private matters, I shall of course be glad to do so.

Hoping to be able to see you soon again, I remain with kind regards,

yours sincerely

(signed) FRITZ VON OPEL

Fritz von Opel
c/o Bayer & Clauson
67 Wall Street
New York City
Telegram Address Byaclauson

Defendant's Exhibit 97

(Translated from the German original)

[Enclosure to letter Dr. Ballay of 3-20-40]

Budapest, March 14, 1940

To Messrs.
Giulini Brothers
Ludwigshafen

[Stamped Received March 26, 1940]

We acknowledge receipt of your letter of March 6, 1940 which reads as follows:

"

Ludwigshafen, on
the Rhine, March 6, 1940

Transdanubia Bauxit A.G.
Budapest

On the basis of the negotiations conducted by your Mr. Fritz von Opel, on the one hand, and by our attorney-in-fact, Dr. Georg Ballay, attorney at law in Budapest, we confirm the fact that we concluded with you the following supply contract:

You undertake to ship to us 100,000 tons of bauxite at a basic price of RM 10.00 (ten reichsmarks) f.o.b. car Suemeg or Zalahalep stations (Komitat (country) Zala, Hungary), shipment to be made from the "Margot I-IV" and "Edgar" mines, one half of which is owned by you, one half by Mr. Lucovnik, engineer, and subject to the following conditions:

Quality: the bauxite which is to be supplied shall contain not less than 55% Al_2O_3 and not more than 4% SiO_2.

The quality shall be determined for every 1000 tons supplied. The procedure to be followed in making the analysis shall be subject to a special provision entitled "bauxite analysis" which was signed simultaneously with this agreement by the parties. The costs of the analysis shall be borne in equal parts by both parties.

Discounts and additional payments: The basic price of RM 10.00 shall refer to a quality of bauxite containing 58% Al_2O_3 and 3% SiO_2 and exhibiting a humidity of 7%.

[stamped: Contracts folder]

If the bauxite which is supplied shall contain more or less Al_2O_3, RM 1.00 for each 1% and ton shall be added or deducted, as the case may be. If the bauxite should contain more or less than 3% silicic acid, RM 2.00 for each 1% and ton shall be deducted or added as the case may be.

Shortages because of humidity in excess of 7% shall be made up by compensating shipments made without charge. One half of the freight charges to the German frontier shall be charged to you and will be credited to us. You are at liberty to pay off the credit thus accruing in our favor by making shipments to us without charging us therefor.

Price: As of today, RM 10,00 equal 16.10 Pengoe (sixteen Pengoe and ten heller). If, as a result of a change in the foreign exchange situation, the pengoe equivalent should decrease by more than 5% and we should not be willing, to compensate you for the decrease in proceeds by increased payments in marks you shall be authorized to cancel this agreement.

Payment: Payment shall be made against duplicate bill of lading through the German-Hungarian Clearing. The Reichmark payments shall be made by us to the German Clearing Fund (Verrechnungskasse) on your behalf to the account of the Hungarian National Bank.

Shipments: Shipment of the 100,000 ton of bauxite shall be started in the spring of 1940 as soon as weather conditions permit. You undertake, to deliver not less than 25,000 tons during the year 1940, another 35,000 tons during the year 1941, and the balance during the year 1942.

The obligation to make shipments terminates if bauxite of the agreed quality shall no longer be available in the mentioned mines in quantities which make mining commercially feasible and if substitute shipments from other mines shall not be possible.

In the event of disputes the parties agree for every controversy arising out of this final letter to submit to the exclusive jurisdiction and arbitration of the Royal Budapest Central Circuit Court in Budapest.

This final letter, as a confirmation of an oral agreement and as commercial letter is deemed to be exempt of fees; if, upon presentation of this letter to any authority fees should become payable they will be borne in equal parts by both parties.

We request you to confirm to us this oral agreement in identical form.

Very truly yours,

Giulini Bros., G.m.b.H.

Signatures

Executed before us
as witnesses

The correctness and genuineness of the above signature is hereby certified,
Ludwigshafen on the Rhine, March 6, 1940,
Chamber of Industry and Commerce, for the Palatinate, in Ludwigshafen on the Rhine,

Signatures "

We have noted the contents of the above and consider it as binding also on us.

Very truly yours,

Transdanubia Bauxit Reszveny Tarasag

(sgd.) KRAUSZ DR. TIMAR

Defendant's Exhibit 98

Enclosure 1

Aide Memoire

Recorded on October 24, 1940 in the office of Dr. Georg Ballay, attorney-at-law. Present were the undersigned.

In view of the Government decree on the changed operation of the foreign trade, the Hungarian National Bank has permitted the continuation of the delivery contract closed on March 6, 1940 between the Transdanubia Bauxit A. G. of Budapest, and Gebrüder Giulini G. m. b. H., of Ludwigshafen, for a period of three months, on the condition that the price be Reichsmarks 14.50 per ton free on rail at the mine. For this reason, the contracting parties have agreed to raise the price from Reichsmarks 10.00 to Reichsmarks 14.50 per ton, free on rail at mine, in accordance with the regulations of the Hungarian National Bank, for a period of three months, without affecting the other provisions of the delivery contract,* the start and the expira-

(Handwritten Note: * [Subject to approval by the Government of Nov. 26, 1940, Feb. 26, 1941.])

tion of the three months' period will be governed by the decision of the Hungarian National Bank.

Dr. Georg Ballay, as authorized agent for Rudolph Lucovnik, engineer, and the representatives of the Transdanubia have agreed that Article 3 of the lease of March 4, 1940 be raised from P(engö) 1.25 to P. 3.20 for those quantities of bauxite which are delivered within the period of three months mentioned in the preceding paragraph.

This increase will be duly reported to both the Royal Office of Duties and Taxes and the Hungarian National Bank.

The other provisions of the lease shall remain unchanged.

In addition, the Transdanubia Bauxit A. G. and Gebrüder Giulini G.m.b.H. have agreed that the provision of the delivery contract of March 4, 1940 regarding the guaranty of quality of the bauxite be changed as follows:

A bauxite shall be considered as conforming to the quality guaranty if it contains at least 47% aluminum oxide (Al_2O_3) usable for further processing. The yield of the

bauxite will be determined by deducting the disilicic acid content from the actual Al_2O_3 content.

The authorized agent of Rudolph Lucovnik, engineer, and the Transdanubia Bauxit A.G. have agreed to authorize Lessee to mine and utilize the Sekunda bauxite up to a quantity of 20,000 tons provided a yield of 47% is obtained.

Lessee shall be obliged to pay 50 Heller rent on each ton of Sekunda bauxite mined.

The provisions of Article 3 of the lease of March 4, 1940 shall determine the due dates of such lease payments.

(sgd.) Edgar Giulini
Heinrich Frick
Georg von Krausz
Dr. Georg Ballay

Defendant's Exhibit 105

TELEGRAM

A. NAT6 VIA RCA=CD ZURICH 39 18
NLT MASON HOUGHLAND=
=CARE SPUR DISTRIBUTING CO=

OVERSEAS INVESTORS INTEND SELLING PARTICIPATION TO MEET OTHER OBLIGATIONS WHAT I PERSONALLY DEEPLY REGRET PLEASE COMMUNICATE ULRICH SHREVEPORT WHO IS INFORMED ACCORDINGLY INTEND TO SAIL SOON POSSIBLE REGARDS=FRITZ DOLDERGRAND ZURICH 830A SE

Defendant's Exhibit 106

On January
Thirteenth
Nineteen Forty-one

Dear Fritz:

Friday, the 17th, I am leaving here for an inspection trip which will be interrupted at Charleston, S. C. by a three-day stop.

Leaving there, Friday, the 24th, I will go to Savannah, Georgia and I wondered if it would be possible for you to meet me there for a conference. If that point would not be convenient to you, I would be glad to adjust my trip to your convenience. I cannot well come all the way to Southern Florida at this time. Please wire me so I can make my plans.

We do not yet have the Spur December earnings, but I feel confident that they will be quite satisfactory. Of course, the taxation clouds grow darker, but there is nothing we can do about those.

Do not forget to give the best wishes of the entire family to Margot.

Sincerely yours,

(signed by Houghland
—M. J. K.)

Mr. Fritz Von Opel
224 Arabian Road
Palm Beach,
Florida

Defendant's Exhibit 107

HOTEL DE SOTO
SAVANNAH, GA.

Dear Mason!

I just came in at 1:30 a.m. Please call me in the morning at any time. It will take me 45 minutes to get ready.

Best regards

(Signed) FRITZ

Elapsed time 7 h. 48 min. for 452 miles. I feel a little shaky!

Defendant's Exhibit 108.

[EXCERPTS]

OVERSEAS FINANCE CORP. LTD. LIESTAL

BETEILIGUNGEN

&

WERTSCHRIFTEN

Depôt

BETEILIGUNG.

UNTERBETEILIGUNG ARGENTINIEN

Fr.

1939	Text	Soll	Haben	Konto No
June 22	Prov. Adler	23 175 —		
Juli 4	Vergtg. "Pesos 2 250 000 — ä 103 = $ 522548 ä 4.43	2 315 000 —		
" "	Vermittlg. Prov. Adler	5 793 80		
" 6	Belastg f.1 Tag Geldvorlage	192 40		
Dec. 31	Annulation		2 315 000 —	
			2 315 000 —	
			29 161 20	
		2 344 161 20	2 344 161 20	

Defendant's Exhibit 109

(Letterhead of Kresel, Hershkopf, Marin & Myerson)

December 9th, 1942

C. R. Krigbaum, Esq.
Internal Revenue Agent in Charge
225 Broadway
New York City

Attention: Mr. Albert Schwartz,
Internal Revenue Agent

Dear Sir:

Pursuant to a tentative closing arrangement made with Mr. Albert Schwartz, Internal Revenue Agent, I enclose herewith and am filing for the respective taxpayers therein named, the following:

1) Form 870 containing waiver of restriction on assessment and collection of deficiencies in tax for the taxable years 1939, 1940, 1941, executed by Uebersee Finanz-Korporation, A. G., by the undersigned as attorney-in-fact.

2) Income tax returns on Form 1120-NB of Uebersee Finanz-Korporation, A.G. for the calendar years 1936, 1937, 1938, 1939, 1940 and 1941, executed by me as attorney-in-fact.

3) Three affidavits of Hans Frankenberg, explaining the late filing of the returns for the years 1939, 1940 and 1941.

4) Form 870 containing waiver of restriction on assessment and collection of deficiencies in tax for the

calendar years 1936, 1937, 1940 and 1941, executed by Fritz von Opel.

5) Form 972, containing consent of Fritz von Opel as share holder, to exclude $137,890.25 in his gross income in his return for the taxable year ending December 31, 1937, as a taxable dividend received by him on the shares of stock of Uebersee Finanz-Korporation, A.G. (in duplicate).

6) Income tax returns on Forms 1040-NB, for the calendar years 1936 to 1941, inclusive, executed by Mr. von Opel, together with his affidavit explaining the late filing of each of said returns.

7) Form 973, information return, filed by Uebersee Finanz-Korporation, A.G., for the calendar year 1937 under §-28 of the Internal Revenue Code, executed by me as attorney-in-fact.

8) Personal holding company returns for the calendar years 1936 to 1941, inclusive, (some in duplicate as required by law) executed on behalf of Uebersee Finanz-Korporation, A. G. by me as attorney-in-fact, together with affidavit of Hans Frankenberg setting forth the reasons for the late filing of each of said returns.

This will further advise you that every effort will be made to expedite the payment of taxes, interest and penalty, if any, covered by the foregoing returns, by having Uebersee Finanz-Korporation authorize the Alien Property Custodian (which has vested all of Uebersee's property) to make payment out of funds and property of Uebersee so vested with said Custodian.

This will further confirm my arrangement that the tentative agreement of settlement reached with Mr. Schwartz covering the tax liability both of Uebersee Finanz-Korpo-

ration and Mr. von Opel, for the years 1936 to 1941, inclusive, includes the assessment of a delinquency penalty of 25%, even though the same is not specifically set forth in Forms 870 executed by Uebersee and Mr. von Opel, respectively.

Yours very truly,

(Signed) WM. PEYTON MARIN

WPM:GM

Defendant's Exhibit 110

(TELEGRAM)

NA2 58 NL XC=OSSINING NY JUNE 26 MASON HOUGHLAND=SPUR DISTRIBUTING CO=

WOULD LIKE TO SEE YOUR ENGINERS REPORT STOP FEEL PRETTY SURE OF HAVING SOLVED PROBLEM SMALL MODELL WORKS NICELY IF YOU SEND ME NORMAL NOZZLE & VALVE I SHALL BUILD & TEST FULL SIZE DEVICE IN BERLIN & RETURN IT TO YOU IN AUGUST ADDED EXTRA COST ABOUT TWO DOLLARS PER NOZZLE SUGGEST TO DISCONTINUE OTHER INVESTIGATIONS REGARDS=OPEL. . 818

Defendant's Exhibit 111

FRITZ
VON
OPEL
DIPLOM-INGENIEUR

St. Moritz, April 14th, 1936

My dear Mason,

a friend of my father is the manufacturer of so-called "exact pumps", which are used for the distribution of all kinds of heavy liquids, as i.e. varnish, salad-oil, motor-oil, linseed-oil and so on. They are used as well in grocery-stores as in garages and filling-stations and they are the only German system, which passed the Government's test for exact measurement. Figure 19 and 20 of the enclosed pamphlet show a filling-station-device and I wonder whether Spur can profitably use these pumps. In my opinion this problem is worth while studying it, as such pumps would cut out all expenses connected with the handling of glassbottles and so on. Furthermore it would enable you to get a closed cheque on the quantity sold, as I count the gallons are sold in the same way as done with gasolene. They may also be used to fill glassbottles with the exact amount of oil, which may be useful for certain distributions.

I can't quote you an exact price, not knowing the number of pumps you may be interested in, but I guess, that the price will be about $50.-.- to $70.-.-

The reason I write you about this is 1. because I think it may be of some interest to you, 2. because I meditate about buying these patents for a German factory, we control and with the idea in mind, of selling the patents in U.S.A. By this reason I ask you the favour of going over

the whole matter and of telling me, whether or not you see a market for these devices in U.S.A.

With best regards,

Yours sincerely

FRITZ v. OPEL.

Defendant's Exhibit 112

(TELEGRAM)

ADLER AND CO
HANNS FRANKENBERG
ADOLF GAENG ST. PETERSTRASSE 16
ZURICH SWITZERLAND

9-21-39 NIGHTLETTER

HAVE TODAY CABLED OVEREEES FINANCE CORPORATION AS FOLLOWS QUOTE PERMIT ME TO CALL TO YOUR NOTICE CAPITAL STOCK SPUR DISTRIBUTING CO INC. STANDING IN NAME OF HANNS FRANKENBERG AND ADOLF GAENG AS YOUR NOMINEES CANNOT BE SOLD EXCEPT AFTER COMPLIANCE WITH PROCEDURE CONTAINED YOUR AGREEMENT DATED NOVEMBER 27 1933 WITH ME WHICH GIVES ME RIGHT OF REFUSAL OF ANY SALE OF YOUR STOCK OR ANY PART. UNQUOTE PLEASE TAKE NOTICE OF CONTENTS OF ABOVE. AM INFORMED TODAY BY OPEL OF YOUR KNOWLEDGE OF THIS AGREEMENT AND OF YOUR INTENTION TO COMPLY WITH IT. WOULD APPRECIATE CABLED CONFIRMATION J. M. HOUGHLAND

Defendant's Exhibit 113

TRANSLATION (Excerpt)

RULES AND REGULATIONS NO. 6 IMPLEMENTING THE ORDER OF THE REICHSPRAESIDENT CONCERNING FOREIGN EXCHANGE CONTROL ISSUED ON OCTOBER 2, 1931

RGBl. Part. I, p. 533

Pursuant to Sections 15, 17, Subsections 1, 22 of the Order of the Reichspraesident concerning Foreign Exchange Control, dated August 1, 1931 (RGBl. pt. I, p. 421) the following Rules and Regulations are enacted:

ARTICLE I

Section I

(1) Individuals having their domicile or usual residence in the German Reich and provided that they have their domicile or place of management in Germany,

a. Corporations, corporations with limited partners, colonial corporations, incorporated and unincorporated mining associations, limited companies, cooperatives, mutual insurance associations, mortgage banks, ship mortgage banks;

b. Incorporated and unincorporated associations, incorporated funds, foundations, other funds devoted to a special purpose and other associations recognized by private law but not included under "a" above;

c. Commercial partnerships, limited and similar partnerships recognized by the law merchant in which the partners are deemed to be entrepreneurs (co-entrepreneurs);

d. Credit institutions governed by public law,

shall offer and upon request sell and transfer, not later than October 10, 1931, to the Reichsbank branch established for their locality (either directly or through a banking institution which has been granted authority by the Reichsbank to buy and sell foreign exchange), foreign currency, claims payable in foreign currency, foreign securities acquired after July 12, 1931 and domestic securities payable in a foreign currency which are not listed for trading on a German stock exchange, and gold (gold coins withdrawn from circulation, refined gold, gold in alloyed, crude or semi-manufactured form),

whenever such currency, claims, securities and gold exceeds, on October 2, 1931, a total value of two hundred Reichsmarks; for purposes of computing this amount spouses not permanently separated, parents and minor children (see Section 23 of the Income Tax Act) shall be deemed to be one individual.

(2) Persons subject to the provisions of Subsection (1) who are not in Germany on the effective date of these Rules and Regulations shall comply with the requirements of Subsection (1) not later than one week after their return to Germany.

(3) Persons whose foreign currency, claims payable in foreign currency, securities and gold do not have a value exceeding the amount referred to in Subsection (1) may be required to surrender such holdings within a period to be determined by a later notice.

(4) The companies referred to in Subsection (1)a and c, shall comply with the requirements set forth herein even if, for practical purposes, they must be deemed to be subsidiaries of a foreign firm.

Section 2

(1) The requirements of Section 1 shall also be complied with by persons who have complied with Rules and Regulations Nos. 1 and 2 implementing the Order of the Reichspraesident against the Flight of Capital and the Flight from Taxation of July 21 and 25, 1931 (RGBl. pt. I, pp. 387 and 396) and with Rules and Regulations Nos. 3 and 4 implementing the Order of the Reichspraesident concerning Foreign Exchange Control, issued August 29 and September 4, 1941 (RGBl. I, pp. 561 and 477) even if the assets have been declared exempt by the Reichsbank or a banking institution authorized by it in accordance with Section 1, Subsection (2) of the Order against Flight of Capital and Flight from Taxation dated July 19, 1931 (RGBl. pt. I, p. 373) or pursuant to Section 16, of the Order concerning Foreign Exchange Control.

(2) . . . . . .

Section 3

(1) The persons referred to in Section 1, Subsection (1) are required to offer and upon request to sell and transfer to the Reichsbank branch established for their locality (directly or through a banking institution which has been granted authority by the Reichsbank to buy and sell foreign exchange), within three days after their acquisition, currency, claims, securities and gold as defined by Section 1, Subsection (1) acquired after October 2, 1931 in any manner other than pursuant to a license issued in accordance with Section 2, Subsections (2) and (4) of the Order concerning Foreign Exchange Control and Section 10 of these Rules and Regulations, even though these assets do not have a value of two hundred marks.

(2) With respect to assets acquired within the exemption as provided for by Section 9, Subsection (2), the requirement established pursuant to Subsection (1) shall be complied with within one month after the acquisition if the person who acquired them shall then still be in possession thereof.

(3) Section 1, Subsection (1), second half of the sentence, Subsections (2) and (4) shall apply.

(4) . . . . . .

ARTICLE II

Section 9

(1) The exemption of one thousand Reichsmarks established by Section 1 of the Order concerning Foreign Exchange Control in connection with Section 10 of the Rules and Regulations No. 3 shall be reduced to two hundred Reichsmarks.

(2) . . . . . .

(3) . . . . . .

Section 10

Gold (as defined by Section 1, Subsection (1)) shall be acquired or transferred or brought to a foreign country or the Saar Territory, with the written approval only of the Office of Foreign Exchange Control Transactions affecting gold (as defined by Section 1 Subsection (1)) shall be entered into only with the written approval of the Office of Foreign Exchange Control.

Section 12

The term "transaction" as referred to in Section 3, 4, and 6 of the Order concerning Foreign Exchange Control and Section 10 of this Order shall include changes in legal relationships effected by levy of execution or of attachment.

Berlin, October 2, 1931. The Reichminister of Finances

H. Dietrich

On behalf of the Reichminister of Economics

Dr. Trendelenburg

Undersecretary

Defendant's Exhibit 114

TRANSLATION (Excerpt)

Order of the Reichspraesident Against the Flight of Capital From Germany and From German Taxation

Issued July 18, 1931

(RGBl. Part I, pp. 373 *et seq.*)

Pursuant to Section 48, Subsection (2) of the Reich Constitution the following Order is hereby issued:

Chapter 1. *The Duty to File a Report.*

Title 1. *The Duty to File a Report with the Reichsbank.*

Section 1.

(1) Persons, as defined by Section 2 of the Property Tax Act, of May 22, 1931 (RGBl. Part I, p. 237) who own

foreign money instruments or claims payable in foreign currency shall, within a period to be determined by the Reich Cabinet, offer and upon request sell and transfer to the Reichsbank pursuant to the general conditions governing its transactions, such monetary instruments and claims.

(2) The requirements as established by Subsection (1) shall not apply to any person who, within the period as determined pursuant to Subsection (1), shall report to the Reichsbank (Section 4) the foreign money instruments or claims and state that he needs the assets reported for purposes which are justified by the public interest in the national economic welfare.

(3) In the event that a statement is submitted pursuant to Subsection (2) the Reichsbank (Section 4) shall determine whether the purposes stated are justified by the public interest in the national economic welfare. If the Reichsbank does not deem the purposes thus justified it (Section 4) may demand that the foreign assets shall be sold and transferred in accordance with Subsection (1).

(4) Persons subject to the requirement of Subsection (1) to (3), who, upon the beginning of the period so determined pursuant to Subsection (1), shall be in a foreign country, shall comply with their duties within a period which shall not end prior to the lapse of one week after their return.

(5) The requirements set forth in Subsections (1) to (4) shall also apply with respect to such foreign securities which, after July 12, 1931, were acquired in exchange for foreign money instruments or claims payable in foreign currency.

Section 2.

(1) The duties established for owners by Section 1 shall also be complied with by any person who

1. is in possession of a reportable asset and claims it as his own;

2. exercises control over a reportable asset through a fiduciary, a holding company or in any other fashion.

(2) Any person, who, in accordance with the Reich Code of Internal Revenue, particularly Sections 103 *et seq.* thereof, is subject to the duties of a taxpayer, shall also be required to perform the duties of the taxpayer owed to the Reichsbank (Section 4) in accordance with Section 1.

Section 3.

(1) "Money instruments" for purposes of this Order shall mean money (coins, notes, bank notes and the like), remittances, drafts, checks and bills of exchange with the exception of small coins.

(2) "Claims payable in foreign currency" for purposes of this Order shall mean claims which the creditor may require to be paid in actual foreign currency. The term shall not include foreign securities and claims which do not fall due except upon notice exceeding three months.

Section 5.

(1) Any person who intentionally or negligently violates the provisions of Sections 1 to 4 shall be punishable by imprisonment. Whenever an intentional violation is particularly grave, the Court may sentence the accused to hard labor for a term not exceeding ten years.

(2) In addition to imprisonment, the Court may impose a fine. In imposing such fine the Court shall not be limited to a maximum amount.

(3) In addition to the sentence, the Court shall order confiscation of the assets with respect to which an intentional or negligent violation of Sections 1 to 4 has been committed. If the order of confiscation cannot be enforced, payment of an amount equal to the value of the assets shall be ordered. Upon confiscation title to the confiscated assets shall vest in the Reich. If an equal amount shall be ordered to be paid, payment shall be made into the treasury of the State.

(4) In addition to the sentence, publication of the sentence at the expense of the defendant may be ordered. The scope and manner of such publication shall be determined by the judgment. No publication shall be made later than six months after the judgment has become final.

Title 2.

Duty to file reports with the Tax authorities.

Section 6.

(1) Any person, as defined by Section 2 of the Property Tax Act of May 22, 1931, shall report to the Collector's Office, not later than July 31, 1931, interests as defined in Subsection 3. The report shall set forth the nature and amount of such interest.

(2) If a company is formed or an interest in a company acquired after July 24, 1931, the report shall be filed within one week upon formation of the company acquisition of the interest.

(3) Interest in a company shall be reportable if no more than five individuals or members of their family (Sections 67, Subsections (2) and (3) of the Reich Code of Internal Revenue, of May 22, 1931) shall jointly hold an interest therein exceeding fifty percent. The interest is reportable whether held directly or through a fiduciary or a holding company.

(4) Intentional violation of the provisions of Subsections (1) to (3) shall be punishable like a tax fraud; for particularly grave violations the defendant may be sentenced to hard labor for a term not exceeding ten years. Negligent violations of Subsections (1) to (3) shall be subject to the penalties provided for violations jeopardizing the collection of taxes. The provisions governing the criminal procedure for violation of the revenue laws shall apply.

Section 7.

(1) Compliance with the duties owed to the Reichsbank (Section 4) in accordance with Sections 1 to 4 shall not constitute compliance with the duty to file a property return with the Collector's Office with respect to foreign money instruments and claims payable in a foreign currency.

(2) With a view to such compliance and to the provisions granting immunity from prosecution for violation of the revenue laws (Section 8) the period for filing property tax returns shall be extended to July 31, 1931. A taxpayer who has filed a return but failed to include reportable assets shall report these assets to the Collector's Office not later than July 31, 1931.

(3) Any taxpayer who, in violation of any provision of law, fails to report, not later than July 31, 1931, taxable assets to the Collector's Office shall be punishable for such violation of the revenue laws in accordance with the provisions of the Reich Code of Internal Revenue. Particular-

ly grave, intentional violations may be punished by imprisonment at hard labor for a term not exceeding ten years.

Second Chapter.

Amnesty granted for Violation of the Revenue Laws.

Section 8.

(1) Any taxpayer who has failed to report taxable property, income or occupational earnings in violation of applicable law shall be granted an amnesty from the penalties incurred because of such violation of the revenue laws and shall not be liable to make the additional payments set forth in Subsection (2) if, after publication of this provision in the Reichsgesetzblatt, but not later than July 31, 1931, he reports the assets not previously reported to the Collector's Office having jurisdiction or another agency of the Reich Finance Administration or to the proper agency charged with collection of occupational taxes.

(2) . . . . . .

Section 11.

The Reich Cabinet is authorized to issue rules and regulations and general orders for the implementation of this Order.

Berlin, July 18, 1931

The Reichspraesident
von Hindenburg

The Deputy Reichschancellor and Reich Minister of Finance
H. Kietrich

The Reich Minister of the Interior
D. Wirth

On behalf of the Reich Minister of Economics
Trendelenburg,
Undersecretary

Defendant's Exhibit 116

Dr. Hanns Frankenberg
Adolph Gaeng

c/o Overseas Finance Corporation Limited
Obersee Finanz-Korporation A.-G.
Zurich 1

Anrich, den August 12, 1937
St. Peterstrasse 16

Messrs. Walter V. D. Bayer
and/or Andrew G. Clauson, jr.,
67, Wall Street,
New York, N. Y.

Dear Sirs,

In connection with the memorandum of agreement be tween Uebersee Finance Corporation and Rodessa Oil & Refining Corporation dated August 5, 1937, a copy o which is enclosed, we, as the nominees of Uebersee Financ Corporation and as stockholders of record of Rodessa Oi & Refining Corporation and Hurricane Petroleum Corpo ration, hereby appoint either or both of you to act for u as our attorneys and representatives in voting our stock executing documents or taking any other necessary action which may be required in order to carry out and con summate the plan, conditions and terms provided for i such agreement.

Yours truly,

/s/ Hanns Frankenber

/s/ Adolph Gaeng

Memorandum of Agreement between Uebersee Finance Corporation and Rodessa Oil and Refining Corporation.

AGREEMENT.

Rodessa Oil & Refining Corporation represented by its stockholders M. J. Grogan and B. P. Crittenden hereby agrees to transfer to and register in the name of the nominees of "Uebersee", Frankenberg and Gaeng of Zurich, Switzerland, one third (1/3) of its capital stock, viz. three hundred shares, in consideration of the payment to Rodessa, of the sum of two hundred fifty thousand dollars, New York U. S. A. Funds on or before November 1, 1937, of which

$148.729.— shall be furnished by Uebersee

$ 50.243.50 shall be furnished by Hurricane

$ 51.028.50 shall be furnished by De Soto

in consideration of cancellation of Crude oil advance, subject the following conditions and terms:

1. Rodessa shall acquire all of the capital stock of the Caddo Pipe Line Corp. and Pullman Oil Co. at cost price of each subject to the retention by Grogan and Crittenden of an oil payment obligation payable out of gas oil or other minerals produced from the acerage owned by Pullman and in a total amount of one million dollars, payable one third out of 3/8 of the entire production, one third out of 1/4 of the entire production and one third out of 1/8 of the entire production.

2. It is agreed between the contracting parties that the respective money contributions of "Crittenden and Grogan" and Uebersee shall be considered advances, repayable out of current funds, when available and

upon agreement and in that proportion to each as is represented by the respective advances of each to the total of advances. It is agreed at all times the advances of the parties shall be maintained in the same ratio as their respective capital stock ownership.

3. Uebersee agrees that, if necessary, it will hypothecate the producing leases, owned by Hurricane Petroleum Corporation in the style named "East Texas Field", in order to furnish its cash contributions at dates nominated in this agreement.

4. The contracting parties agree that the Grogan Oil Co. Sales Contract with Rodessa shall be adjusted to a basis of one eighth cent per gallon on all products sold from the beginning of operations of Rodessa to date and for the remainder of the contract period.

5. Uebersee agrees that it will as soon as possible execute a power of attorney in the name of Walter V. D. Bayer —67 Wall St., New York, N. Y., authorizing him under their cabled or written instructions to act in their behalf regarding matters pertaining to Hurricane and Rodessa and affiliated companies.

6. Uebersee agrees that it will pledge its Rodessa capital stock along with the stock of Grogan & Crittenden if required, in connection with any necessary financing of Rodessa. Also the parties agree that each will not sell, pledge or otherwise dispose of their capital stock holdings without first notifying the other owners who shall have the right to acquire such shares on the same terms and conditions as those included in a "Bona Fide" offer by others.

7. It is agreed between the parties that any dividends received from Rodessa prior to February 28, 1938, will be reinvested by the stockholders as advances to

Rodessa less amounts applicable to personal income taxes.

8. The stockholders of Rodessa hereby extend Hurricane Petroleum Corporation an option to acquire all of the stock of Rodessa at any time up to December 1, 1937, under the following terms and conditions:

a) The stockholders of Rodessa shall receive a 22-1/2% interest in the total outstanding capital stock issue of Hurricane Petroleum Corporation and Hurricane and/or Uebersee guarantees to increase the authorized capital stock issue of Hurricane in order to provide the additional shares required.

b) Hurricane and/or Uebersee agree that all stockholders of Hurricane shall have the right to subscribe proportionately to any additional issues of capital stock by Hurricane.

c) Uebersee or its associates hereby agree to advance as working funds the additional sum of one hundred fifty-thousand dollars to Hurricane if the stockholders of Rodessa consider such payment necessary in view of the working capital situation. If so required, Uebersee shall have until February 28, 1938, to make such payment, and actual exchange of the shares will be postponed until that time. Withdrawal of such advances shall be governed by terms of Paragraph 2.

d) Uebersee and/or Hurricane agree that the operations of the properties so acquired shall be included under the existing G&C management contract and, further, that earnings of Rodessa and its subsidiaries subsequent to August 31, 1937, shall be includ-

ed in the earnings upon which the management fee is based.

8. General: It is agreed by Crittenden on behalf of himself & Grogan that consideration will be given the following, from time to time as business conditions require:

a) That Grogan & Crittenden will leave, in the business, at interest, some part of their unpaid and earned management fees.

b) That Grogan Oil will defer collection of some part of their sales commission.

Zurich, August 5th, 1937.

Defendant's Exhibit 117

June 2, 1937.

Swiss Federal Banking Commission
Berne

We revert to your inquiry of April 13, 1937 and wish to make the following comments thereto:

1. The purchases of majority blocks of American stock, which we had contemplated, have taken place. The companies whose share we have acquired do not constitute a concern with each other.

2. The creditors are recruited from the same circles as our stockholders, and the stockholders belong exclusively to a very small (close) group. We emphasize that our com-

pany has no relations whatsoever with the general public, but conducts business solely with the groups closely associated with it.

In accordance with your wishes we enclose a copy of our last balance sheet.

Very truly yours,

1 Enclosure (mentioned)

[fol. 2325] Minute Entry of Argument and Submission
(Omitted in Printing)

[fol. 2326] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10464

UEBERSEE FINANZ-KORPORATION, A. G., Appellant,

v.

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian, Appellee

Appeal from the United States District Court for the District of Columbia

OPINION

Argued November 13, 1950. Decided February 8, 1951

Mr. Thurman Arnold, with whom Messrs. Edward J. Ennis and Walter E. Gallagher were on the brief, for appellant. Mr. Milton V. Freeman also entered an appearance for appellant.

Mr. James L. Morrisson, Attorney, Department of Justice, with whom Assistant Attorney General Baynton and Mr. Joseph Laufer, Attorney, Department of Justice, were on the brief, for appellee. Mr. George B. Searls, Attorney, Department of Justice, also entered an appearance for appellee.

Before Clark, Prettyman and Fahy, Circuit Judges

PRETTYMAN, Circuit Judge:

Appellant brought this civil action to recover shares of stock in certain American corporations, which shares had been seized by and vested in the Alien Property Custodian. The underlying and surrounding circumstances are extended and complicated. For present purposes we need state only the few which control the conclusion to the controversy.

On October 5, 1931, Wilhelm and Marta von Opel, who were then and always remained nationals of Germany, gave

by a written instrument, to their son, Fritz, six hundred shares of stock in a German corporation. The instrument provided, in part:

> "I, Wilhelm von Opel, herewith transfer title to these shares to our son Fritz von Opel by assigning to him our claim for the delivery of these shares to us.
>
> "The usufruct in the shares is not assigned to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the death of the surviyor of them. However, 20% of all dividends and interest received will accrue to Fritz von Opel."

The instrument also provided that the proceeds of any sale of, or the property taken in exchange for, the transferred shares should be substituted for those shares. The [fol. 2327] property presently involved is governed by the above-quoted provision, being successor to and substituted for that property.

The instrument of gift created an *in personam* right in Wilhelm von Opel to demand that a usufruct be established, and such establishment could be effected at any time by actual or symbolic delivery of possession to the usufructuary or his agent. Such a delivery was accomplished by placing the shares (except qualifying directors' shares) in a safety deposit box and giving the key to an agent of Wilhelm von Opel. The District Court concluded that a valid usufruct was thus created, giving Wilhelm and his wife *in rem* rights in the shares, among which rights was the right to the income from the shares. We agree with that conclusion. Indeed it is not seriously contended before us that the usufruct was not at one time established or that, if established, such usufructuary interest did not include the right to the income from the shares.

Appellant says that the usufruct was disestablished in 1936, when the particular shares were sold and the essential co-possession of them was thus lost. But it appears that the sale was a form only, conceded by appellant to have been for the purpose of tax avoidance, and the transaction was thereafter reversed; indeed it does not appear that the co-possession was ever actually disturbed. This was the view of the District Court, and we see no reason to disagree with it. Appellant also says that the usufruct was waived. It

appears that waiver was discussed by the parties, but we are shown no evidence that a waiver was ever effectuated or intended to be effectuated.

The essence of the legislation dealing with enemy ownership or control of property[1] is the prevention of economic benefit to the enemy.[2] The epitome of such economic benefit would be the flow into enemy hands of earnings from American efforts. No phase of interest in property in this country fits more precisely into the intent and purpose of this legislation than does the ownership of the right to the dividends on the stock of domestic corporations. The language of the statute is sufficient to encompass that interest; a usufruct is the sort of "interest" of which the statute speaks. In the case at bar that right was owned by German nationals. The usufruct, a right *in rem*, which included a right to the dividends, was owned, apart from the title to the shares themselves, by German nationals. This case does not involve a diluted "taint"; it involves the ownership by enemy nationals of the economic benefits of American business. This seems to us to be a more obvious objective of the vesting provisions of the statute than is the bare ownership of a sterile legal title. As between the right to the naked tree and the right to the periodical fruit, the benefit to the enemy would be more in the latter than in the former.

The judgment of the District Court is affirmed on the foregoing ground. It is unnecessary that we consider other matters deemed by that court to support its conclusion.

Affirmed.

Clark, Circuit Judge, dissents.

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[1] Sec. 5(b) of the Trading With The Enemy Act of 1917, 40 Stat. 411, as amended by Sec. 301 of the First War Powers Act of 1941, 55 Stat. 839, 50 U. S. C. A. App. §§ 5(b), 616.

[2] Clark v. Uebersee Finanz-Korp., 332 U. S. 480, 92 L. Ed. 88, 68 S. Ct. 174 (1947).

[fol. 2328] [File endorsement omitted]

UNITED STATES COURT OF APPEALS

UEBERSEE FINANZ-KORPORATION, A. G., Appellant,

vs.

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian, Appellee

Appeal from the United States District Court for the District of Columbia

Before Clark, Prettyman and Fahy, Circuit Judges

JUDGMENT—Filed February 8, 1951

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Circuit Judge Prettyman.

Dated February 8, 1951.

Circuit Judge Clark dissents.

[fol. 2329] IN THE UNITED STATES COURT OF APPEALS

[Title omitted]

MOTION FOR CLARIFICATION, REHEARING OR MODIFICATION OF JUDGMENT—Filed February 16, 1951

Comes now Appellant and respectfully moves this Honorable Court that it clarify certain matters in its opinion of February 8, 1951 in the above-entitled case or, in the alternative, that it grant a rehearing or a modification of its judgment.

As grounds for this motion, Appellant states that it intends as soon as possible to file a petition for a writ of certiorari in the Supreme Court of the United States. The

Supreme Court in a previous decision in this same cause has indicated that the questions raised are of importance and await judicial clarification. (*Clark* v. *Uebersee Finanz-Korporation*, 332 U. S. 480, 489-490). This decision was rendered after reargument ordered by the Court (331 U. S. 870). Appellant believes that it will assist the Supreme Court in acting on the petition for a writ of certiorari if the basis of the affirmance of the lower court set out in the opinion is clarified in the following particulars, which for convenience will be set out as questions:

I

Is it the meaning of the Court that a right in rem (i.e., the usufruct) in shares of a Swiss corporation (Appellant, Uebersee Finanz-Korporation) creates a right in rem in stock of American corporations owned by and held as assets of the Swiss corporation? Does the Court believe that "*ownership*" of a right to dividends on the shares of [fol. 2330] Uebersee, a Swiss corporation, constitutes "*ownership*" of a right to dividends on the shares of the American corporations which Uebersee holds in its treasury?

A reading of the opinion indicates that the Court has answered both the above questions in the affirmative. The opinion states that by an original instrument of gift executed in 1931, Wilhelm von Opel transferred to his son Fritz 600 shares of a German corporation (Adam Opel A. G.). The Court states that this instrument created in Wilhelm von Opel a *right in personam* to demand that a usufruct be established in the German shares or in property taken in exchange for them. The opinion then refers to the Finding (Finding 37, R. 57-58) of the District Court that in 1935 Fritz von Opel established a usufruct in favor of Wilhelm and Marta von Opel by placing all his shares in Uebersee Finanz-Korporation (the appellant here) in a safe deposit box in Zurich and delivering the key to one Frankenberg, their agent for that purpose. Then the Court concludes without setting forth its reasons that this usufruct in stock of Uebersee was a "right in rem" and "ownership of the right to dividends" in the stock of the *American corporations*, which were the principal assets of Uebersee.

While this seems to be the ruling of the Court, Appellant

is not entirely certain such an interpretation of the opinion is correct for two reasons: (1) It has not heretofore been held in corporation law that a right in rem to shares of a corporation constitutes a right in rem or indeed any direct interest in the assets of the corporation; (2) Since the opinion does not discuss this point, it may be that the Court was under the impression that the District Court had found there had been a delivery of possession and a resulting usufruct in the shares of the American corporations which were seized by the Custodian.

The lower court approved confiscation and retention of the American shares, not on the ground that the enemy had any direct right in them, but because of alleged enemy taint of the Swiss corporation which owned them. This Court rejects enemy "taint" as a basis for its decision and seems to rely on enemy "ownership of the right to dividends" in the American shares. Clarification of the reasoning by which the Court concluded that there was an enemy-owned right in rem in the American shares and that enemy taint as found by the District Court is unim-
[fol. 2331] portant would assist the Supreme Court in determining the questions raised on certiorari.

II

Assuming the Court believes that there is a usufructuary right in rem in the American shares for 80% of the dividends during the life of Wilhelm and Marta von Opel, the following question arises:

Is it the meaning of the opinion that a life interest in 80% of the dividends on the stock of the American corporations, which the Court found to exist in the enemy, is a ground which justifies the Custodian retaining and confiscating the remaining interest of Fritz von Opel, a neutral?

It is, of course, Appellant's view that the stock in the American corporations was owned by Uebersee and that stockholders of Uebersee have no legal right to it any more than the stockholders of an American corporation have a legal right to its assets. If, however, the Court is correct in holding that the usufruct in the shares of Uebersee creates an equivalent right in rem in Uebersee's American assets, the opinion does not explain why it permits the

Alien Property Custodian to retain more than that right which it finds the enemy "owns". The remaining interest in the stock after the death of the enemy, confiscated in this case, is extremely valuable because the enemy Marta von Opel is over 75 years old.

The lower court approved confiscation and retention of the whole property because of its conception of "enemy taint". But the opinion of this Court does not appear to rest on this ground. Appellant believes that the Supreme Court will be aided in determining the character and importance of the questions presented if the basis for confiscation of a substantial and important interest in the shares owned by a neutral is clarified.

III

In the event the Court did not intend to hold that the Alien Property Custodian can retain absolute ownership in the American assets of Uebersee, because of Fritz von Opel's remaining interest in the shares of Uebersee, Appellant respectfully petitions for a modification of the Court's judgment. In that event, Appellant requests that the Dis-
[fol. 2332] trict Court be ordered to modify its judgment so as to award to Uebersee the interest in the shares of the American corporations other than the usufruct.

Wherefore, Appellant respectfully moves this Honorable Court that it clarify its opinion of February 8, 1951, in the above-entitled case, or, in the alternative, that it grant a rehearing or a modification of its judgment.

Respectfully submitted, Arnold, Fortas & Porter, Ring Building, Washington, D. C., by Thurman Arnold; Gallagher, Osherman, Connor & Butler, Bowen Building, Washington, D. C.; Edward J. Ennis, 165 Broadway, New York, New York, Attorneys for Plaintiff-Appellant.

Thurman Arnold, Edward J. Ennis, Walter E. Gallagher, of Counsel.

[fol. 2333] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

UEBERSEE FINANZ-KORPORATION, A. G., Appellant,

v.

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian, Appellee

Memorandum on Appellant's Motion for Clarification of the Opinion of the Court

OPINION—June 22, 1951

Messrs. Thurman Arnold, Edward J. Ennis and Walter E. Gallagher for appellant.

Assistant Attorney General Baynton and Mr. George B. Searls, Attorney, Department of Justice, for appellee.

Before Clark, Prettyman and Fahy, Circuit Judges

PRETTYMAN, Circuit Judge:

Appellant asks for clarification of the opinion of the court in this matter [1] in three respects, or, in the alternative, for modification of the decision.

1. The first point upon which the appellant asks clarification concerns the view of the court as to whether the usufruct in shares of the Swiss corporation created a usufruct in the shares of American corporations owned by the Swiss corporation.

The usufruct here involved was originally created in 600 shares of stock in the Adam Opel Works, a manufacturer of motor cars in Germany. In 1931 these shares were sold, and the proceeds consisted of approximately $2,500,000 and 47,625 shares of General Motors stock. Thereafter the major part of those proceeds was used to purchase certain investments in the United States, consisting of stock in corporations located in the United States. These shares were the assets vested by the Alien Property Custodian

[1] Uebersee Finanz-Korporation v. McGrath, U. S. App. D. C., Feb. 8, 1951.

and the subject of the present lawsuit. The plaintiff is a Swiss corporation, which is a holding company acquired for the purpose of holding the proceeds of the sale of the 600 shares in the Adam Opel Works. It owned the vested property. All of its shares except three qualifying shares [fol. 2334] were placed by Fritz von Opel in lock box, and the key was delivered to an agent of Wilhelm von Opel. The interposition of this wholly owned holding company did not destroy or disturb the usufruct in the proceeds of the 600 shares of Opel stock. The interposition was of form only and not of substance. The co-possession of the shares of the holding company, pursuant to the terms of the usufruct agreement, was sufficient to perfect that usufruct. Appellant would establish what seems to us to be a purely formal separation between the ownership of the assets and the ownership of the shares of a wholly owned holding company. Whatever ownership the Swiss corporation had in its assets was subject to the usufruct agreement, and the co-possession of the shares of the holding corporation was sufficient to establish the requisite co-possession of its assets.

In the course of its discussion appellant says, "This Court rejects enemy 'taint' as a basis for its decision . . ." Appellant misunderstands the statement in the opinion. We said, "This case does not involve a diluted 'taint'; it involves the ownership by enemy nationals of the economic benefits of American business." That statement was an *a fortiori* statement. The Supreme Court had made it clear that enemy taint was sufficient to support seizure and vesting and that indirect as well as direct interest was within the phraseology of the statute, "any property or interest". Our observation was to the effect that in the case at bar the enemy interest was the complete and perfect sort of interest to which the statute was directed, and was not merely a taint. This is not a borderline case, in our view.

2. Appellant inquires as to our meaning in respect to 20 per cent of the shares, which it says is owned by Fritz von Opel. The usufruct agreement recited:

> "The usufruct in the shares is not assigned to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the death

of the survivor of them. However, 20% of all dividends and interest received will accrue to Fritz von Opel.

That provision is perfectly clear. No part of the usufruct in the shares was assigned to Fritz von Opel. The whole of the usufruct remained with Wilhelm and his wife. Fritz von Opel was given a contract right to receive from Wilhelm and his wife 20 per cent of the dividends and interest received by them. This right in Fritz was a contract right and not a right *in rem*.

3. Appellant's third request for clarification is really a request for modification and is premised upon Fritz von Opel's ownership of a 20 per cent interest in the shares. Since we hold that he had no such ownership, except a contractual right to receive a portion of the dividends received by the enemy owners, we need not consider further this portion of the motion.

Clark, Circuit Judge, did not participate in the foregoing memorandum.

[fol. 2335] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER—Filed June 22, 1951

On consideration of appellant's motion for clarification of the opinion of this Court in the above-entitled case, it is

Ordered by the Court that the motion be granted and that the opinion be, and it is hereby, clarified in the manner indicated in the memorandum this day filed herein.

Per Curiam.

Dated: June 22, 1951.

Clark, Circuit Judge, did not participate in the above-mentioned memorandum.

[fol. 2336] [File endorsement omitted]

UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER—Filed June 27, 1951

On consideration of the appellant's motion for a rehearing of this appeal or a modification of the judgment of this Court herein, it is

Ordered by the Court as follows:

(1) That the motion for rehearing be, and it is hereby, denied;

(2) That the motion for modification of judgment be, and it is hereby, denied.

Per Curiam.

Dated: June 27, 1951.

[fols. 2337-2338] [Received endorsement omitted]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—May 8, 1951

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 8th, 1951.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Stipulation as to printed record (omitted in printing).

[fol. 2339] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 178

ORDER ALLOWING CERTIORARI—Filed October 15, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Clark took no part in the consideration or decision of this application.

Office Supreme Court, U.S.
FILED
JUL 7 1951
CHARLES ELMORE CROPLEY
CLERK

No. 178

IN THE

Supreme Court of the United States

October Term, 1951

UEBERSEE FINANZ-KORPORATION, A. G., *Petitioner*,

against

J. HOWARD MCGRATH, Attorney General and as successor to the Alien Property Custodian, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

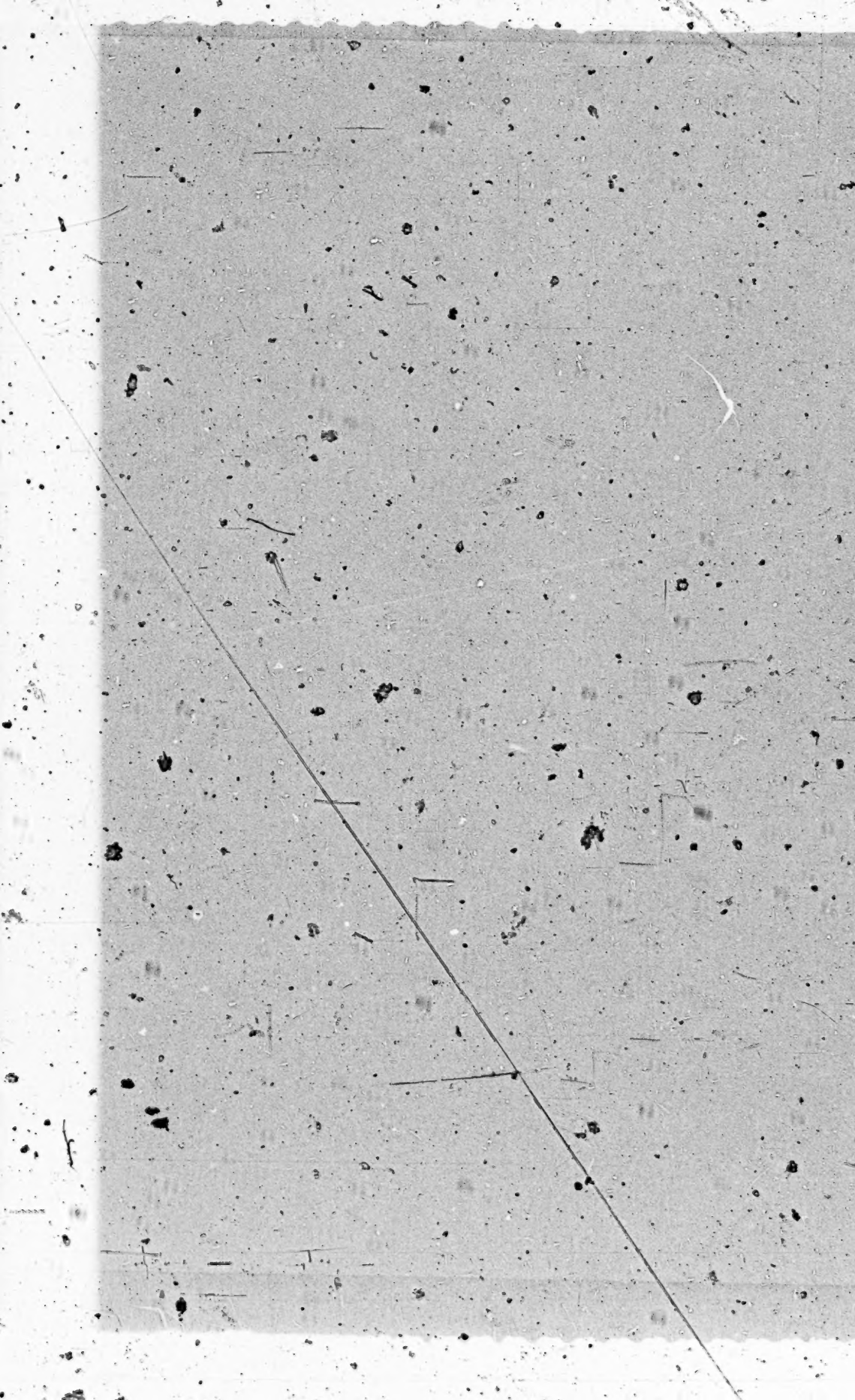
ARNOLD, FORTAS & PORTER,
Ring Building, Washington, D. C.,

GALLAGHER, OSHERMAN, CONNOR & BUTLER,
Bowen Building, Washington, D. C.,

EDWARD J. ENNIS,
165 Broadway, New York, N. Y.,
Attorneys for Petitioner.

THURMAN ARNOLD,
EDWARD J. ENNIS,
HARRY M. PLOTKIN,
Of Counsel.

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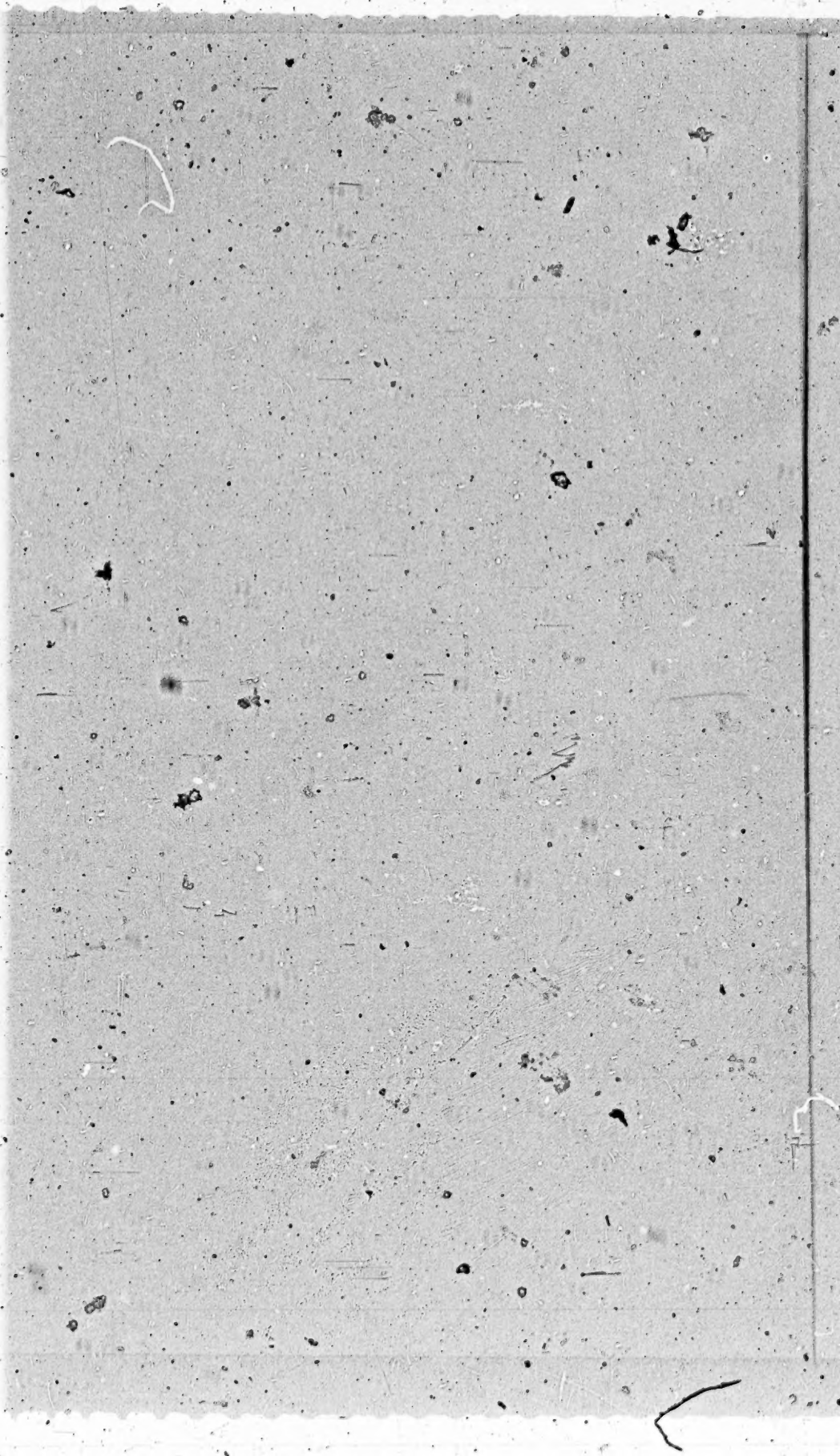
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CITATIONS

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Behn, Meyer & Co. v. *Miller*, 266 U. S. 457, 45 S. Ct. 165 13

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IN THE

Supreme Court of the United States

October Term, 1951

UEBERSEE FINANZ-KORPORATION, A. G., *Petitioner*,

against

J. HOWARD MCGRATH, Attorney General and as successor to the Alien Property Custodian, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Uebersee Finanz-Korporation, A. G., prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled cause on February 8, 1951, affirming the judgment of the District Court of the United States for the District of Columbia rendered for the respondent and an order denying petitioner's Motions for a new trial in an action instituted pursuant to the Trading with the Enemy Act of October 6, 1917 (40 Stat. 411) as amended, to recover shares in domestic corporations owned by petitioner, a Swiss corporation, and vested by respondent and his predecessors as Alien Property Custodian. A "Memorandum on Appellant's Motion for Clarification of the Opinion of the Court" was entered on June 22, 1951, and on June 27, 1951, the Court below en-

tered an order denying Petition for Rehearing or Modification of Judgment.

OPINION BELOW.

The opinion of the District Court (R. 41) is reported in 82 F. Supp. 602. The first opinion of the Court below, Circuit Judge Clark dissenting without an opinion, (R. 2326) and the second opinion of the Court "Memorandum on Appellant's Motion for Clarification of the Opinion of the Court", Circuit Judge Clark not participating (R. 2333), have not yet been reported.

JURISDICTION.

The judgment of the Court below was entered on February 8, 1951. On February 16, 1951, petitioner filed a "Motion for Clarification, Rehearing or Modification of Judgment." On June 22, 1951, the Court below filed a "Memorandum on Appellant's Motion for Clarification of the Opinion of the Court". On June 27, 1951, the Court below entered an order denying the Petition for Rehearing or Modification of Judgment.* The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

1. Whether a usufruct in the stock of a neutral corporation under which an enemy had during his lifetime the right to 80% of the dividends and the limited rights, if any, to vote the stock to protect the dividends constitutes such ownership or enemy taint that the Alien Property Custodian may retain the American property of that neutral corporation in a situation where the enemy never exer-

*On May 7, 1951, petitioner filed with this Court an Application for Extension of Time within which to File Petition for Writ of Certiorari since it was not clear what action the Court below would take with respect to petitioner's "Motion for Clarification, Rehearing or Modification of Judgment." By order, dated May 8, 1951, an extension of time for filing was granted until July 8, 1951. In view of the action of the Court below granting the petitioner's Motion to Clarify the Opinion, and denying the Petition for Rehearing or Modification of Judgment, the ambiguity has been removed and the time for filing the petition runs from the date of the last order above.

cised either his right to collect dividends or attempted to vote the stock and where legal title to the shares, and all other rights in those shares (except those covered by the usufruct) were owned by neutrals.

2. Assuming that the Alien Property Custodian is not required to return any indirect beneficial interest in the property given to the enemy by the usufruct, may he retain in addition to such enemy interest the rights and beneficial interests of a neutral. In other words, should not the Custodian's right of confiscation of American property of a neutral corporation be limited to the confiscation of interests held directly or indirectly by an enemy?

STATUTES INVOLVED.

The relevant portions of the Trading with the Enemy Act, as amended, are set forth in the Appendix.

STATEMENT.

Petitioner, Uebersee Finanz-Korporation, A. G., (herein called "Uebersee"), is a corporation organized under the laws of Switzerland. Sometime prior to 1936 it purchased a majority of the stock in two American corporations—about 345,760 out of 625,000 shares in Harvard Brewing Company, a Delaware Corporation, which owned the Harvard Brewing Company (a Massachusetts corporation) and 73,039 out of 140,000 shares in Spur Distributing Company, Inc., which sells gasoline to the public through filling stations. These shares were held by Uebersee continuously until 1942 when they were vested by the Alien Property Custodian, respondent's predecessor in this case (R. 2, 3, 2240).

Virtually all of the stock in Uebersee is held by Fritz von Opel, a citizen and resident of Germany from birth until December, 1929. At that time Fritz von Opel left Germany and never returned except for short visits. He lived successively in the United States, Belgium and Switzerland and in 1934 he became a Swiss domiciliary. On Novem-

ber 21, 1939, he was naturalized as a citizen of Liechtenstein. The record shows that he has been in the United States since May, 1940, and since 1939 he has not been in Germany at all (R. 52, 53).

The facts and circumstances surrounding Fritz von Opel's acquisition of his interest in Uebersee are necessary for an understanding of the issues in this case. In 1931, Wilhelm and Marta von Opel, Fritz' parents, executed an instrument giving to Fritz 600 shares in Adam Opel, A. G., a German corporation. All provisions of the gift instrument were made applicable to any property received as a result of a sale or exchange of the above shares. The property involved in this suit was purchased with the proceeds of the sale of this stock. The instrument of gift contained the following clause: (R. 1806)

> The usufruct in the shares is not assigned to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the death of the survivor of them. However, 20% of all dividends and interest received will accrue to Fritz von Opel.

The instrument further provided that in the event that Fritz should predecease his parents without leaving legitimate issue the gift would become void and the property would revert to the parents or surviving parent. If the parents should predecease Fritz, the gift would be considered as an advancement and be deducted from Fritz' share in the property otherwise inheritable by him from his parents. It further provided that "in the event that the parents shall not have drawn in full or in part the income from the shares accruing to them by virtue of their usufruct" such income should also be accounted for by Fritz as an advancement (R. 1807).

The record is clear as to the nature of rights under German law created by a usufruct, except for voting rights.

The District Court's finding is that a usufruct creates the right (R. 60-61):

> (a) to the enjoyment of the property or, in the case of money or securities, to the income from the securities;
>
> (b) to co-possession of the property together with the person holding legal title to the property;
>
> (c) to a voice in the management of the property insofar as the maintenance and preservation of the usufructary's rights under sub-section (a) above are concerned;
>
> (d) to prevent the sale or disposition of the property as a result of his right to co-possession;
>
> (e) The German Civil Code does not mention whether the usufructary, for the protection of his income, has any voting rights. In the absence of a decided case the legal commentaries speculate in three different directions. One position is that the title owner has all voting rights and the usufructary no voting rights whatsoever. The second position is that the title owner has a voting right for all measures which have nothing to do with income while the usufructary can vote in regard to income. The third position is that the usufructary has all the voting rights.

The District Court did not attempt to make a finding resolving the divergent opinions as to the right to vote.

The record is clear that Wilhelm and Marta von Opel never exercised any of the rights which they had on account of the usufruct. They did not request or receive any of the dividends (R. 61), and whether or not they had any voting rights in the stock, the District Court after examining all the evidence did not find that they exercised any such rights.

The District Court found against Uebersee and refused to order a return of any of the property on the ground that the circumstances surrounding the ownership of stock in Uebersee constituted enemy taint within the meaning of this Court's opinion in *Clark* v. *Uebersee Finanz-Korporation, A. G.*, 332 U. S. 480, 68 S. Ct. 174, and

hence precluded recovery under the Trading with the Enemy Act.

There were three circumstances upon which the District Court relied to establish enemy taint. The first is the usufructary interest of Wilhelm and Marta von Opel, plus the contingent interest which they or their daughter owned in the stock if Fritz predeceased his parents with no issue. Since Fritz' parents were enemy aliens at the outbreak of war, the above interests, according to the District Court, were sufficient in and of themselves to constitute enemy taint (R. 48).

The second circumstance relied on by the District Court pertains to Fritz von Opel himself. The court stresses the fact that Fritz von Opel was born in Germany and from his birth in 1899 until 1929 lived in that country together with his family, prominent industrialists known not only in Germany but in other parts of the world. He himself achieved wide-spread distinction in sports in Germany and participated in its behalf in international events. The District Court felt that while after 1929 he spent a large part of his time out of Germany, his roots remained firmly in Germany. The Court, however, explicitly found that Fritz von Opel left Germany permanently in 1929 and that since that time he has resided elsewhere and that as early as 1934 he became a domiciliary of Switzerland. The total amount of time he spent in Germany between 1929 and 1939 did not exceed 10% and he spent no time in Germany after 1939 (R. 48-49, 52-53).

The Court also stressed that Fritz von Opel did not obtain new citizenship until November, 1939, after the war had started. At that time he became a naturalized citizen of Liechtenstein. The Court points out that he paid $10,000 to obtain the citizenship and signed certain formal documents. The Court states that he never has been in Liechtenstein more than a few hours at any one time; that his visits have been few and of short duration; that he has never established a place of abode there; that he never took an oath of allegiance there; and that he did not formally renounce citizenship in Germany. Nevertheless,

the Court did conclude that he was a citizen of Liechtenstein and that his status as such citizen was not open to attack in this case. The Court concluded that, while Fritz von Opel is a citizen of a neutral country, between 1939 when he became a citizen of Liechtenstein and 1941 when war was declared by the United States, he had a continued interest in the welfare of and sympathy for Germany; the Court in its opinion did not even intimate that such was the case after war was declared (R. 48-49).

The final circumstance relied upon by the District Court to show enemy taint arises from the fact that Uebersee owned complete stock interest in Transdanubia Bauxite, A. G., a Hungarian corporation, which mined bauxite, an essential ingredient in the production of aluminum. The Court found that Transdanubia shipped bauxite to Germany during October, November and December, 1941. The Court did not find that any bauxite was shipped after that date although the company had a contract to ship bauxite to Germany through 1942. On the contrary, the Court specifically found that in the spring of 1941, Fritz von Opel refused requests from the officers of Transdanubia for additional funds in order that mining operations could be continued; he suggested that the mines be sold or leased. The Court apparently felt that some enemy taint attached to Uebersee in that it never took any affirmative steps after December 7, 1941 to sever its relations with Transdanubia. The Court admitted, however, that there was no evidence that Uebersee voted the stock in Transdanubia from 1940 through 1945 or that either Uebersee or Fritz von Opel received any income from Transdanubia at any time (R. 49-50, 55-57).

The District Court refused to consider petitioner's contention that even if it were appropriate for respondent to retain any interest which Wilhelm and Marta von Opel had in the stock, Fritz von Opel had a well-defined separate interest which he was entitled to recover. The Court stated that this question was not presented by the pleadings and hence could not be passed upon (R. 50-51).

On February 8, 1951, the Court below, with one Judge dissenting, affirmed the judgment of the District Court. It held that the usufruct is a right *in rem* which includes a right to the dividends. This usufruct was owned apart from the title to the shares themselves by German nationals. Hence, according to the Court below, "this case does not involve a diluted 'taint'; it involves the ownership by enemy nationals of the economic benefits of American business. This seems to us to be a more obvious objective of the vesting provisions of the statute than is the bare ownership of a sterile legal title." (R. 2327).

On February 16, 1951, petitioner filed a "Motion for Clarification, Rehearing or Modification of Judgment" (R. 2329). Three points were made in the Motion. The first point inquired whether the Court was of the opinion that the right *in rem* which Wilhelm and Marta von Opel held in Uebersee by virtue of the usufruct also created a right *in rem* in stock of American corporation held in Uebersee's treasury. The District Court had held against Uebersee on the theory that it was tainted. The Court below did not adopt this reasoning but instead seemed to rely on the "ownership of the right to the dividends"—a right *in rem* which respondent could vest.

In the Court's Memorandum issued on June 22, 1951, the Court addressed itself to this first point and held that whatever ownership petitioner "had in its assets was subject to the usufruct agreement, and the co-possession of the shares of the holding corporation was sufficient to establish the requisite co-possession of its assets". The Court explained that in its view this case did not present a situation of diluted taint but rather an *a fortiori* situation of "ownership by enemy nationals of the economic benefits of American business." (R. 2333-34).

The second point raised by petitioner in its Motion was that assuming the usufruct created a right in enemy nationals, since by its very terms it was a life estate only and conferred rights to receive only 80% of the dividends, on what basis could respondent retain all the rights in the

property—i. e. the right to 20% of the dividends during the lifetime of Wilhelm and Marta von Opel, the voting rights, incident to legal title, and full legal rights after the death of the von Opel parents" (R. 2331). The Court in its Memorandum addressed itself only to the right in Fritz von Opel to receive 20% of the dividends during the period of the usufruct. As to this right the Court dismissed it by calling it a contract right and not one *in rem*. The Court did not attempt to explain what difference it makes whether a right is *in personum* or *in rem*. Nor did it explain why the rights of Wilhelm and Marta von Opel to 80% of the dividends constituted a right *in rem* while the right of Fritz von Opel to 20% of the dividends was not an *in rem* right despite the fact that it was created by the same instrument and Fritz von Opel had co-possession of the shares as much as did his parents. Finally, the Court completely ignored Fritz von Opel's legal title to the stock, his right to vote the stock, and his ultimate remainder interest in the stock (R. 2334).

The third point raised by the Motion requested the Court to modify its judgment so as to award to petitioner the interest in the shares other than the usufruct (R. 2331-32). The Court in its Memorandum treated this request in the same way as the second point and denied it (R. 2334).

The Court's Memorandum was issued on June 22, 1951. On June 27, 1951, the Court below entered a further order denying petitioner's Motion for Rehearing and also its Motion for Modification of Judgment (R. 2336).

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In holding that the limited usufructuary interest in Uebersee's shares constituted enemy ownership or taint of Uebersee's American assets either within the meaning of this Court's opinion or otherwise within the Trading with the Enemy Act.

2. In holding that the usufructuary right to 80% of the dividends from Uebersee's shares constituted a right to dividends from the shares in American corporations owned by Uebersee.

3. In holding that Uebersee's corporate identity could be virtually destroyed for purpose of treating an alleged enemy usufructuary interest in Uebersee's shares as an enemy usufructuary interest in property owned by Uebersee.

4. In holding that an enemy usufructuary interest in American property of Uebersee, even if such interest existed, was sufficient to warrant confiscation not only of that alleged enemy interest but of all other non-enemy interests in such property.

5. In holding that the neutral Liechtenstein citizen who was Uebersee's sole stockholder merely had a contract right to 20% of the dividends from Uebersee's shares.

6. In holding that a valid usufruct under German law existed in the property in question at the time of vesting.

7. In not holding that the alleged usufruct was insufficient ownership or control of Uebersee to constitute "enemy taint" of Uebersee subjecting its American property to confiscation within the meaning of the Trading With the Enemy Act.

8. In not holding that Uebersee's ownership of a Hungarian subsidiary was no evidence of "enemy taint".

9. In not holding that the circumstances of the acquisition of Liechtenstein citizenship by the owner of Uebersee's shares and his sympathy for Germany prior to the war between the United States and Germany was not evidence of "enemy taint".

10. In not holding that at the most the alleged enemy usufructuary life interest in 80% of the income from Uebersee's shares should be retained and confiscated and the remaining interest should be released to Uebersee or its sole stockholder and in not remanding the case for this purpose.

11. In not granting a new trial to consider additional evidence on the question of waiver of the alleged usufruct.

12. In affirming the District Court.

REASONS FOR GRANTING THE WRIT.

1. This is the second time this case is before this Court. The first time—*Clark* v. *Uebersee Finanz-Korporation, A. G.*, 332 U. S. 480, 68 S. Ct. 174—only the procedural question was presented as to whether petitioner had the right to bring this suit. Because of mutually conflicting statutory provisions this Court had to choose between one section of the statute which appeared to confer a right to prevail simply upon the showing that the suit was brought by a neutral corporation, irrespective of who owned the stock, and another section which seemed to bar recovery if the suit was brought by any foreign person, no matter how friendly or neutral it might be. This Court attempted to give effect to the policies implicit in both sections by adopting an in-between result. It held that foreign persons as a group were not barred from maintaining suits but that in individual cases their right of recovery could be barred if they had an enemy taint.

The Court recognized that this was a compromise solution which was made necessary because of the hasty nature of the legislation in question. The Court explicitly refused to delineate "the extent of holdings necessary to constitute an enemy taint" recognizing the importance of the problems but pointing out that its solution "must await legislative or judicial clarification."

Judicial clarification is urgently needed in this case. The Court below has decided that when a usufructuary interest in a corporation of a neutral country—which interest has not been exercised—is owned by enemy nationals, an *a fortiori* case of enemy taint is presented which results in the confiscation of all the property which such neutral corporation owns in this country plus the interest over and above the usufruct which a neutral stockholder holds in the stock of the foreign corporation.

It is submitted that this constitutes a decision on an important aspect of federal law and that the matter should be settled by this Court. Admittedly, the doctrine of enemy taint is new but the Court below did not even make

a conscientious effort to deal with it. The property in question consisting as it does of shares in a brewing company and a gasoline distributing company is by its very nature incapable of being used in economic warfare against the United States. The usufruct itself is a very limited interest and the record is clear that it was not exercised. Moreover, the usufruct was provided for in an instrument executed long before there was any suggestion of war between Germany and the United States and was created not for the purpose of waging economic warfare against the United States but to make financial provision for Fritz von Opel. Nevertheless, the Court below without even considering these factors concluded that a case of *a fortiori* enemy taint exists simply because a bare usufructuary interest was held by enemy nationals. On the contrary, the interest of enemy nationals is so unimportant and remote that it is difficult to see how any taint at all attaches to Uebersee because of its existence. There is thus no reason at all for respondent to retain any interest in Uebersee, a neutral corporation.

It is important that this question should be settled by this Court as soon as possible. Many other cases are bound to arise which involve the application of the doctrine of enemy taint. As guidance to the courts, this Court should undertake the "judicial clarification" of the doctrine which it enunciated for the first time in the earlier case. If the opinion of the Court below is a fair criterion, it is apparent that there is no real comprehension of the nature of the problem.

A quick settlement of the question by this Court is important for the additional reason that relations with friendly and neutral countries are involved. The property that is involved here is that of a Swiss corporation and of a citizen of Liechtenstein who, according to the record, is a resident of the United States. While the exigencies of war may require extensive powers over the use of property of neutrals, the confiscation of that property should not be lightly countenanced; only the most compelling reasons would justify such a result. Moreover, since American

citizens have extensive investments abroad, we should be careful as to the type of precedents created in this country with respect to confiscation of the property of neutrals which can be used against our citizens in any foreign countries that may happen to go to war. The problem is important enough and urgent enough to require a prompt solution by this Court.

2. Even if this Court is of the opinion that the usufruct of Wilhelm and Marta von Opel was properly vested by respondent and does not have to be returned, there is sound reason for not permitting the judgment of the Court below to stand. The Court below in its "Memorandum on Appellant's Motion for Clarification of the Opinion of the Court" found that the usufruct created a right *in rem* with respect to Uebersee which in turn created a right *in rem* to the property owned by it. The Court did not spell out how it arrived at this result but presumably it did so by piercing the corporate veil and treating directly with the stockholders as though they were the corporation. Under the earlier provisions of the Trading with the Enemy Act, such a result was not permissible, *Behn, Meyer & Co.* v. *Miller*, 266 U. S. 457, 45 S. Ct. 165, but presumably the Court was of the opinion that it is sanctioned by the 1941 amendments to the Act.

Assuming this to be the case, the Court below went too far. For having pierced the corporate veil for the purpose of getting at the usufruct interest of Wilhelm and Marta von Opel, the Court immediately reestablished the veil between Fritz von Opel and the property owned by Uebersee. This it accomplished by the fiction of calling the right of the parents one *in rem* and that of Fritz a contract right which in the eyes of the Court below precluded any recovery by Fritz.

In the earlier case this Court left for later clarification the question as to "what part of a friendly alien corporation's property may be retained where only a fractional enemy ownership appears". This was a clear indication that this Court contemplated that the entire interest in

property should not be confiscated when it is held partly by a friendly alien and partly by an enemy alien. The Court below nevertheless completely ignored the problem and although the matter was specifically raised and argued, refused to consider any interest other than that of the usufruct.

The reasoning of the Court below cannot stand the test of logic nor does it carry out the policy underlying the 1941 amendments to the Trading with the Enemy Act. Certainly, if an intermediate corporation were not involved, it would not be urged that where fractional interests in American property are held by a friendly alien and an enemy alien, the United States can confiscate the interests of both persons. In such a situation if the United States vested the property, surely it could not successfully retain the interest of the friendly alien. This being so, it is difficult to see how the fact that American property is held by a friendly alien corporation—in which fractional interests are held by a friendly alien and an enemy alien—should cause a different result to be reached. Indeed, until the 1941 amendments to the Trading with the Enemy Act, the interposition of a friendly alien corporation operated to prevent the United States from going behind the corporation at all. If after the 1941 amendment the government can pierce the corporate veil and treat directly with the stockholders as though the corporation did not exist, surely it must do so with all stockholders and not merely some? The effect of the ruling by the Court below is to disregard the corporation so far as enemy alien stockholders of a friendly neutral corporation are concerned but to reestablish the corporate veil so far as friendly alien stockholders are concerned. Such an arbitrary and irrational result cannot be read into the 1941 amendments to the Act. Hence, we have the situation that if the corporation is disregarded, fractional interests by friendly and enemy aliens exist in American corporations. The most the government can do is to retain the interest of the enemy alien. It has no legitimate right to retain the interest of the friendly alien.

The Court below apparently was of the opinion that no fractional interests existed. In part, this reasoning was based upon its recreation of the corporate veil with which we have already dealt. But in some respects its reasoning was based upon a purported distinction between rights *in rem* and contract rights.

It will be recalled that when the usufruct was created, at least three separate rights were created. First, the usufruct retained by Wilhelm and Marta von Opel was by its terms limited to 80% of the income; the remaining 20% was specifically given to Fritz. Secondly, legal title to the stock and voting rights went to Fritz. Finally, Fritz had rights of remainder to the stock after the death of his parents.

The Court below discussed only the first right. As to it, the opinion stated that Fritz von Opel's right to 20% of dividends was a contract right and not a right *in rem*. What significance this formalistic distinction, if true, can have is difficult to understand. The same instrument which created a right to 80% of the dividends in his parents created a 20% right in Fritz von Opel. The co-possession of the stock which the parents needed for the usufruct they shared with Fritz. It is thus difficult to see how the rights of the parents turn out to be *in rem* while those of Fritz are merely contractual. But if such a formalistic distinction does serve some purpose, it can hardly serve the substantive purpose of depriving a friendly alien of property. A firmer basis is necessary for this result than mere formalities of classification.

Even more important than Fritz von Opel's right to 20% of the dividends, are the other two rights mentioned above. These the Court below completely neglects. Surely legal title to stock, voting right in such stock, and the remainder interest in such stock are as much *in rem* rights as a usufruct. Whatever right respondent may have to retain the usufruct, it is difficult to see how it can be extended to the rights of Fritz von Opel, a friendly alien.

The compelling reasons we have discussed above (supra, pp. 12-13) as requiring review by this Court are equally ap-

plicable to this point. An important question of federal law is presented which affects our relations with friendly countries. There are undoubtedly numerous situations where fractional interests in corporations are held by friendly and enemy aliens. Moreover, American business investments abroad are undoubtedly in many instances merely fractional interests and fractional interests in the same business enterprises are held by foreign persons. The decision in the instant case will be a precedent that foreign governments may well apply to these American business interests if any of those countries go to war.

3. There are two matters in the District Court's opinion which were not discussed by the Court below but which will undoubtedly be urged by respondent to support the judgment in its favor. The first point is the intimation that Fritz von Opel had enemy taint. The basis for such a conclusion appears to his German parentage, his residence in Germany for the first 30 years of his life, his participation in international athletic events on behalf of Germany, his getting Liechtenstein citizenship only in 1939, and the feeling of the District Court "that between 1939, when he became a naturalized citizen of Lichtenstein, and 1941, when war was declared by the United States, he had a continued interest in the welfare of any sympathy for Germany." (R. 49).

We do not believe that there is any rational basis on the record for finding enemy taint of Fritz von Opel. There is no dispute that he left Germany permanently in 1929 when he was 30 years old and that his visits to Germany from 1929 to 1939 covered only 10% of the time. While he did not acquire non-German citizenship until 1939, he became a domiciliary of Switzerland as early as 1934. The District Court adverted to no overt act of assistance to the German cause but instead relied on his continued interest from 1939 to 1941 in the welfare of Germany. It is not at all surprising to find an interest in German welfare on the part of someone who was born there. Many American citizens have a genuine interest in the welfare of foreign states

where they or their parents were born. Certainly much more than interest in the welfare of the land of your birth is required to establish enemy taint.

4. The second matter in the District Court's opinion that we desire to comment on is its statement that Uebersee's ownership of stock in Transdanubia Bauxite, A. G. indicated enemy taint. Admittedly, Uebersee continued to own its interests in Transdanubia during the war. But the record is bare of any evidence that Uebersee had anything to do with voting the stock, contributing assistance to or receiving profits from the company during that period. The District Court apparently felt that some sort of enemy taint attached to Uebersee because it did not take affirmative steps to sever its relations with Transdanubia. It certainly is a novel doctrine to suggest that in order to avoid enemy taint a friendly alien must renounce his property which he may own in the enemy country. On the contrary, such renunciation enhancing as it would the economic capacity of the enemy would more accurately be the basis for enemy taint than non-renunciation.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

ARNOLD, FORTAS & PORTER,
Ring Building, Washington, D. C.;

GALLAGHER, OSHERMAN, CONNOR & BUTLER,
Bowen Building, Washington, D. C.;

EDWARD J. ENNIS,
165 Broadway, New York, N. Y.
Attorneys for Petitioner.

THURMAN ARNOLD,
EDWARD J. ENNIS,
HARRY M. PLOTKIN,
Of Counsel.
July, 1951.

APPENDIX.

Trading With the Enemy Act, c. 106, 40 Stat. 411, as amended (50 U.S.C. App. 1-31):

SEC. 2. The word "enemy", as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

* * * * * * * * *

SEC. 5 [as amended by the First War Powers Act of 1941, c. 593, Sec. 301, 55 Stat. 839]:

* * * * * * * * *

(b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) Investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or pay-

ments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or ear-marking of gold or silver coin or bullion, currency or securities, and

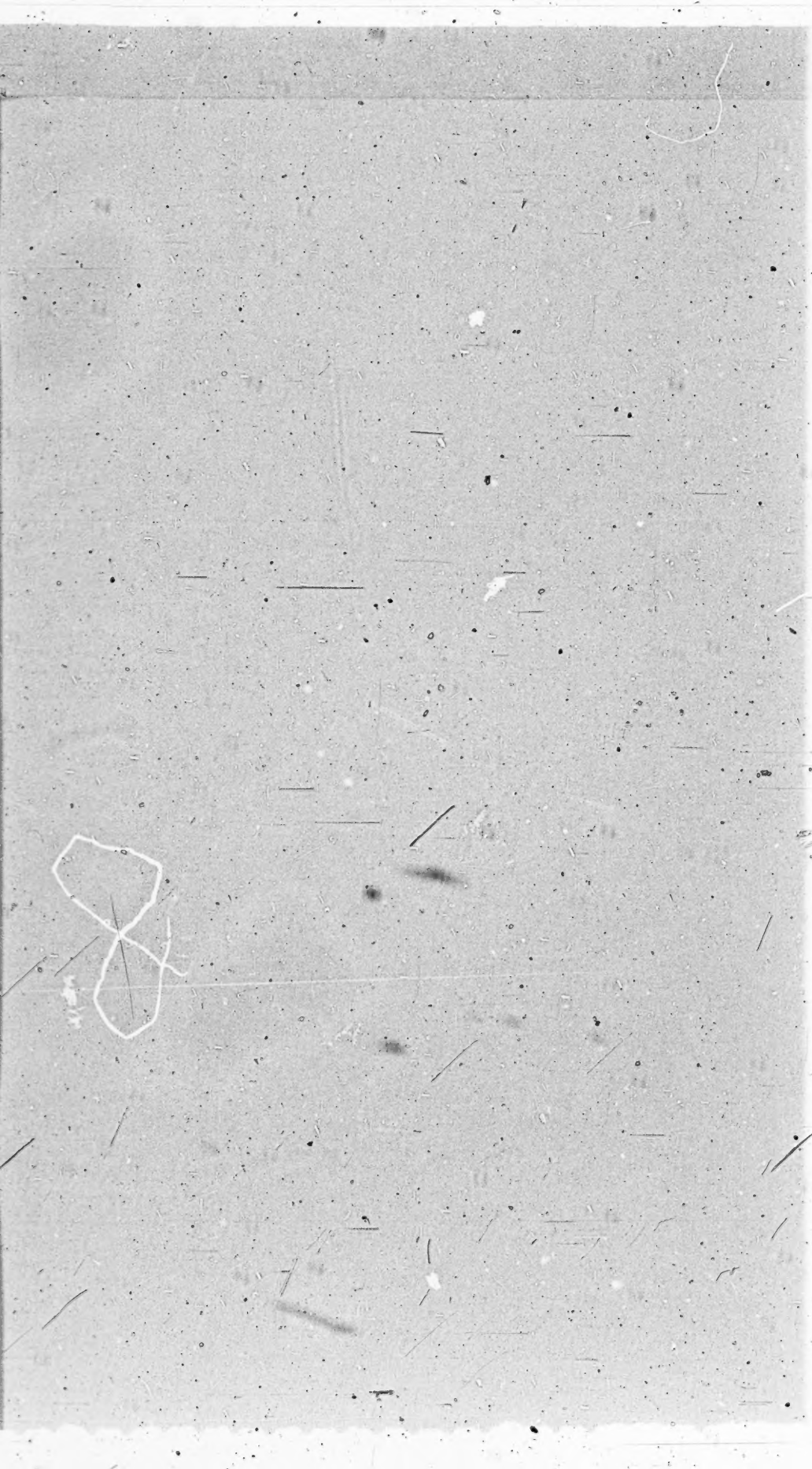
(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * * and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

* * * * * * * * * *

SEC. 9 (a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, * * * may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, con-

veyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. * * *

SEC. 39 [as added by the Act of July 3, 1948, Sec. 12, 62 Stat. 1246]. No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. The net proceeds remaining upon the completion of administration, liquidation, and disposition pursuant to the provisions of this Act of any such property or interest therein shall be covered into the Treasury at the earliest practicable date. Nothing in this section shall be construed to repeal or otherwise affect the operation of the provisions of section 32 of this Act or of the Philippine Property Act of 1946. * * *



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 178.

UEBERSEE FINANZ-KORPORATION, A. G., *Petitioner*,

v.

J. HOWARD McGRATH, Attorney General and as successor to the Alien Property Custodian, *Respondent*.

PETITIONER'S REPLY BRIEF.

THURMAN ARNOLD,
EDWARD J. ENNIS,
HARRY M. PLOTKIN,
Attorneys for Petitioner.

ARNOLD, FORTAS & PORTER,
Ring Building, Washington, D. C.

GALLAGHER, OSTERMAN, CONNOR & BUTLER,
Boyce Building, Washington, D. C.

EDWARD J. ENNIS,
165 Broadway, New York, N. Y.
Of Counsel.

September 5, 1951.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

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v.

J. HOWARD MCGRATH, Attorney General and as successor to the Alien Property Custodian, *Respondent*.

PETITIONER'S REPLY BRIEF.

I.

It is difficult to understand the Government's contention that the issues raised by the petition do not present "any question of general interest calling for further review by this Court" (Br. 29). In support of it the Government argues (Br. p. 13) (1) that the sole question is whether Petitioner is an enemy or is enemy tainted within the principles stated by this Court in *Clark* v. *Uebersee Finanz-Korporation*, 332 U. S. 480; (2) that the District Court properly followed those principles; and (3) that therefore there is no question of importance raised here.

But this argument flies in the face of the language of this Court in the former *Uebersee case*, that the principles governing enemy taint must await further clarification. The opinion there recognized that fractional ownership by a neutral corporation does not necessarily constitute enemy taint and justify confiscation of the property. The opinion states (332 U. S. at 489-90):

> "It is said that the entire property of a corporation would be jeopardized merely because a negligible stock interest, perhaps a single share, was directly or indirectly owned or controlled by an enemy or ally of an enemy. It is also pointed out that securities or interests other than stock might be held by an enemy or ally of an enemy and used effectively in economic warfare against this country. But what these interests are, the extent of holdings necessary to constitute an enemy taint, what part of a friendly alien corporation's property may be retained where only a fractional enemy ownership appears, are left undecided. Since we assume from the allegations of the complaint that respondent is free of enemy taint and therefore is not within the definition of enemy or ally of an enemy, those problems are not now before us. We recognize their importance; but they must await legislative or judicial clarification."

The case is again before this Court and the findings below present the precise question as to the principles of enemy taint reserved for future decision by the former opinion. The alleged enemy taint here is as follows: The property seized was owned by a neutral corporation. The shares of this corporation are owned by a neutral citizen, Fritz von Opel. His parents, who were German citizens, own a partial life interest in these shares. This interest was created by a usufruct established in 1931, long before there was any question of war between Germany and the United States and for reasons that had nothing to do with German-American relations. Instead, it arose out of a gift by the Opel parents to make financial provision for their son. The usufructuary right found by the Court gave the parents

a claim on 80% of the dividends of the neutral corporation for their lives and certain rights of management to protect that claim. The reversionary interest was in Fritz von Opel. No dividends were ever received by the parents and no actual enemy management was exercised after 1940 or at the time of outbreak of war in 1941 or vesting in 1942. The neutral property was always actually controlled and managed solely by American or neutral citizens. It was never utilized by the Axis in any way.[1]

Yet the court below permitted the Alien Property Custodian to confiscate as enemy tainted not only the life interest of the enemy in 80% of the dividends, but also the neutral interest in the remaining 20% and the entire reversionary interest of the neutral.

Not only is the Government's argument that there is no issue of importance here inconsistent with the former decision of this Court; it is also inconsistent with the position taken in the Government's brief in No. 172 (*Kaufman* v. *Societe Internationale*) which states, with reference to this Court's former *Uebersee* opinion (p. 11): "Some of the questions raised by *Uebersee* were of undoubted importance." In a footnote (p. 11) the Government quotes the very language from the opinion which we rely on here. The precise question left for future decision by the former opinion is "the extent of holdings necessary to constitute an enemy taint," (332 U. S. at 489).[2]

---

[1] "We find not the slightest suggestion that Congress was concerned under this Act with property owned or controlled by friendly or neutral powers and in no way utilized by the Axis." *Clark* v. *Uebersee Finanz-Korporation*, 332 U. S. 480, 487.

[2] Neither the trial court nor the court below made any reference to any of the authorities, discussed in the briefs in the court below, on the question of the enemy interest in shares of a neutral corporation sufficient to constitute enemy taint. See *The Unitas* [1948] P. 205, aff. 2 All Eng. Rep. 219; *The Glenroy* [1945] Ap. C. 124; *Re G. Hardt & Co. Pty. Ltd.* (1940), 13 Australian Law Journal 425; *Overseas Trust Corp. Ltd. v. Godfrey* (1940), South African Law Reports, Cape of Good Hope Provincial Division 117; *Re Badische Co. Ltd.* [1921] 2 Ch. 331; *Daimler Co. Ltd.* v. *Continental Tyre & Rubber Co.* [1916] 2 Ap. C. 307 (discussed in *Behn*,

Respondent is not a private litigant who is free to take one position in one case and an entirely diametrically opposing position in another. It is rather a public official under a duty to administer the law fairly and uniformly. In the light of this obligation we suggest that Respondent should welcome the Supreme Court's determination of the question which it concedes (No. 172, Br. p. 11) to be important in the administration of the Trading With the Enemy Act.

In order to extricate itself from the inconsistency involved in conceding that the *Uebersee* case presents an important question and at the same time suggesting that it should not be decided, Respondent, in its brief in No. 172 (pp. 11-12), refers to several bills pending before Congress which concern the question in this case. We have examined the hearings on these bills. They reveal that Respondent when it appears before Congress has opposed them and so far prevented their adoption. Respondent thus appears to be using every effort to prevent clarification of this issue either by the Court or by legislation.

II.

In our Petition for Certiorari we raised as a separate point the fact that the decision of the Court below confiscates the entire property of petitioner, a neutral corporation, notwithstanding the reversionary and other interests in a neutral citizen. It should be noted that the legal ownership of the American property was in a neutral corporation, Uebersee, and that only by disregarding the corpo-

---

Meyer & Co. v. *Miller*, 266 U. S. 457); *Fritz Schulz Jr. Co.* v. *Raimes & Co.*, 100 Misc. 697, 166 N. Y. Supp. 567; *H. P. Drewry, S.A.R.L.* v. *Onassis*, 266 Ap. Div. 292, aff'd. 291 N. Y. 779, 188 Misc. 912, 69 N. Y. Supp. (2d) 850, aff'd. 272 Ap. Div. 870; E. J. Coben, *German Enemy Property*, International Law Quarterly, Vol. 3 (1950) p. 548; Domke, *The Control of Corporations*, International Law Quarterly, Vol. 3 (1950) p. 52; Schuster, *The Nationality and Domicile of Trading Corporations*, Grotius Society Proceedings, Transactions, Vol. II, p. 57, 84 (1917).

rate entity and treating the American assets of Uebersee as if they were owned directly by a stockholder can the enemy interest be spelled out. Eliminating the corporate entity, it is found that Wilhelm and Marta von Opel, the enemies, own a life interest in 80% of the American corporate shares while Fritz von Opel owns the remaining 20% and the reversion in the 80%. Whether the life interest taints the reversion and justifies its confiscation even though it is owned by a neutral is clearly one of the important questions reserved for future decision by the opinion of this Court in the former consideration of this case.

Respondent argues that it is not a question of importance for the following reasons: (Br. 24-25) (1) that the claim was advanced too late, (2) that Uebersee Finanz-Korporation was in no position to assert it, and (3) that the non-enemy interest was "neither separate nor non-enemy".

As to timeliness, (1) above, the record shows that the question was raised first in the District Court (R. 50-51) and then on appeal. It was raised again in the petition for rehearing (R. 2329) and the court below expressly ruled on it. The matter is therefore squarely before this Court.

(2) As to the right of Uebersee to assert that part of its property was not tainted, certainly a corporation should be able to protect its assets from confiscation by the Alien Property Custodian by showing they are neutrally owned either in whole or in part. Here Uebersee is asserting, not a stockholder's right, but its own right to prevent the Custodian from stripping it of its property.

In spite of this the Government seems to imply that a suit by Fritz von Opel rather than Uebersee is the appropriate method for preventing the seizure of the neutral interest in a neutral corporation's assets. In contradiction of this position, as appears from Respondent's brief in No. 172, when such suits are filed by stockholders, Respondent contends they must be dismissed on the ground that stockholders have no right to sue. All of these inconsistent positions fundamentally relate to the undecided question

as to what constitutes enemy taint. They are important and they urgently need clarification.

As to Petitioner's argument in support of (3) above, that the reversionary interest in Fritz von Opel is not an enemy interest, Respondent again disregards the findings of the District Court from which it did not appeal. The District Court found that there was no evidence of actual control by the enemy after 1940 or during the course of the war (F. 40, R. 58),[3] that Fritz von Opel's interest in the welfare of Germany existed only up to the outbreak of war, and that his citizenship in Liechtenstein was valid.

It is true that the District Court, taking all of the circumstances together, concluded that an enemy taint existed solely because the usufruct existed, but this conclusion presents the precise question held to be important by this Court and reserved in its opinion for future decision in the former consideration of this case.

Certain side issues are introduced by Respondent in its statement of facts which are in conflict with the findings of the Court and which, therefore, Respondent cannot raise

[3] Finding 41 (R. 59) is based on a mere inference of control after the war based on the existence of the usufruct and a presumption that in absence of evidence former control continued. When it was pointed out that Frankenberg, the alleged agent for enemy control, was in America and had applied for citizenship, the court explained the extent of the inference as follows (R. 1779, 1782-83):

> "I do not care whether he was an agent after the war or not. My point is the usufructuary interest had been set up * * *."
>
> "There are two forms of control that I am talking about. There are two forms. One of them exists by virtue of this usufructuary interest. That is number one. Now, that did not end, in my judgment.
>
> "I might grant that you are right on this other kind of control, * * * namely, that Frankenberg was over here bossing and telling them what to do. * * * I mean to say where an agency of another one over here, an American with an agency in Germany, would end at the outbreak of war, * * *.
>
> "You may be right, but I am inclined to think that, so far as bossing the company is concerned, I am not entitled to presume that after the outbreak of the war; * * *."

here. For example, Respondent argues in effect that the transaction creating the usufruct was a sham since it cites evidence introduced to establish this point including an alleged inconsistent position taken by the attorneys for Uebersee in the previous suit for the return of gold.[4] This evidence was all before the trial court. After considering it the District Court explicitly found (F. 18, R. 54-55) that the transaction was intended to be a gift "and was not intended to be a sham transaction, * * *". Since Respondent did not appeal from that finding it cannot collaterally attack it.

Conclusion.

The question of "the extent of holdings necessary to constitute enemy taint" was reserved for decision in the first opinion in this case because of its importance. The Government has conceded its importance in its brief in No. 172, now pending before the Court. It is also apparent that orderly administration of the Trading With the Enemy Act can be had only after the clarification of the problem through the exercise of this Court's power of review.

---

[4] The legal memorandum in support of an application for a Treasury export license, discussing usufruct under Roman law, cited Justinian's reference to *nudum proprietatem* or "naked title" or "bare ownership" (R. 2082). The same language was included in Fritz von Opel's affidavit. (R. 2000) However, the affidavit of the German law expert who prepared the gift agreement actually sets forth the rights of the legal owner and the usufructuary in a usufruct (neissbraueh) under the provisions of the German Civil Code and does not use the inaccurate catch phrase "bare ownership" (R. 1986-90). The trial court placed no reliance on this alleged former inconsistent position in making its findings on the nature of usufruct under the German law upon the testimony of the German law experts (R. 60-61). The trial court rejected the respondent's contention of inconsistency when it decided the sham issue against the respondent.

For the foregoing reasons it is respectfully submitted that this Petition for Certiorari should be granted.

THURMAN ARNOLD,
EDWARD J. ENNIS,
HARRY M. PLOTKIN,
Attorneys for Petitioner.

ARNOLD, FORTAS & PORTER,
Ring Building, Washington, D. C.

GALLAGHER, OSHERMAN, CONNOR & BUTLER,
Bowen Building, Washington, D. C.

EDWARD J. ENNIS,
165 Broadway, New York, N. Y.

Of Counsel.

September 5, 1951.

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IN THE

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OCTOBER TERM, 1941.

No. 178

UNITARIA FIRMA-KOMPANIEN, A. G., *Petitioner*,

v.

J. HOWARD MCGRATH, Attorney General and as successor to the Alien Property Custodian, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

OPPOSITION TO MOTION BY THE SOLICITOR GENERAL TO TRANSFER FROM THE SUMMARY DOdocket

THURMAN ARNOLD
EDWARD J. EATON
Attorneys for Petitioner.

ARNOLD, FORTAS & PORTER
Ring Building, Washington, D. C.

GALLAGHER, SHERMAN, COWLES & BUTLER
Barker Building, Washington, D. C.

EDWARD J. EATON
165 Broadway, New York, N. Y.

Of Counsel.

November 8, 1941.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

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UEBERSEE FINANZ-KORPORATION, A. G., *Petitioner*,

v.

J. HOWARD MCGRATH, Attorney General and as successor to the Alien Property Custodian, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

OPPOSITION TO MOTION BY THE SOLICITOR GENERAL TO TRANSFER FROM THE SUMMARY DOCKET

The issues in this case can be very briefly stated. While the record is a lengthy one all the relevant questions can be decided by reference to the findings of fact which are short and simple. It will be unnecessary to refer to any testimony whatever in the course of argument.

It is true, as the Solicitor General says, that the principal issue depends on the legal incidents under German

law of a usufructuary interest held by an enemy citizen in the stock of petitioner, a neutral corporation. Those legal incidents, however, are clearly spelled out in the findings of the Court. Petitioner contends the usufruct amounts only to an interest of the enemy citizen in a portion of the dividends, secured by keeping the stock in escrow. The Government's opposing contention as to the legal effect of the usufruct as defined by the Court can be equally brief.

It is true that the Government may differ with petitioner as to the interpretation of and inferences to be drawn from some findings. But the findings on which such differences may exist can be set out in a page and the differences between the Government and petitioner are pure questions of law as to the legal effect of these findings.

The further question whether the Government has seized more property than it is entitled to keep, assuming that the enemy interest is sufficiently important to justify any confiscation of the property of this neutral, is equally simple. Petitioner will contend that where stock is pledged or put in escrow or used otherwise as security for the obligation of a stockholder to pay eventual dividends to another party, the interest of the pledgor, or however he may be called, and that of the beneficiary of pledge, escrow or similar agreement are entirely separable. They are not fractional interests in the stock in the sense that a stockholder might be held to have a fractional interest in the assets of an enemy tainted corporation (a question raised by the petition in *Kaufman* v. *Societe Internationale, etc., and J. Howard McGrath*, No. 172).

Therefore, we assert the Custodian was at the most entitled to confiscate only the separable interest of the enemy in the American assets and not the entire interest of the neutral corporation. This presents a simple question of law under the findings of fact of the Court defining the legal incidents of the usufruct.

In the present posture of the case on the summary docket, petitioner's opening brief will approximate only twenty-five pages.

Petitioner opposes this motion because granting it would be an invitation to the Government to go into the record, as it did in the court below, and present questions of fact which, while within the power of the Court to review, are not a proper ground for a writ of certiorari. Such a presentation would require petitioner in the interest of caution to answer these irrelevant issues, and thus add to the burden of the Court.

Respectfully submitted,

THURMAN ARNOLD

EDWARD J. ENNIS

Attorneys for Petitioner.

ARNOLD, FORTAS & PORTER
Ring Building, Washington, D. C.

GALLAGHER, OSHERMAN, CONNOR & BUTLER
Bowen Building, Washington, D. C.

EDWARD J. ENNIS
165 Broadway, New York, N. Y.

Of Counsel.

November 3, 1951

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IN THE

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OCTOBER TERM—1951

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Petitioner,

—v.—

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

THURMAN ARNOLD,
EDWARD J. ENNIS,
HARRY M. PLOTKIN,
Attorneys for Petitioner,
Uebersee Finanz-Korporation, A.G.

ARNOLD, FORTAS & PORTER,
Ring Building, Washington, D. C.

GALLAGHER, OSHERMAN, CONNOR & BUTLER,
Bowen Building, Washington, D. C.

EDWARD J. ENNIS,
165 Broadway, New York, N. Y.
Of Counsel.



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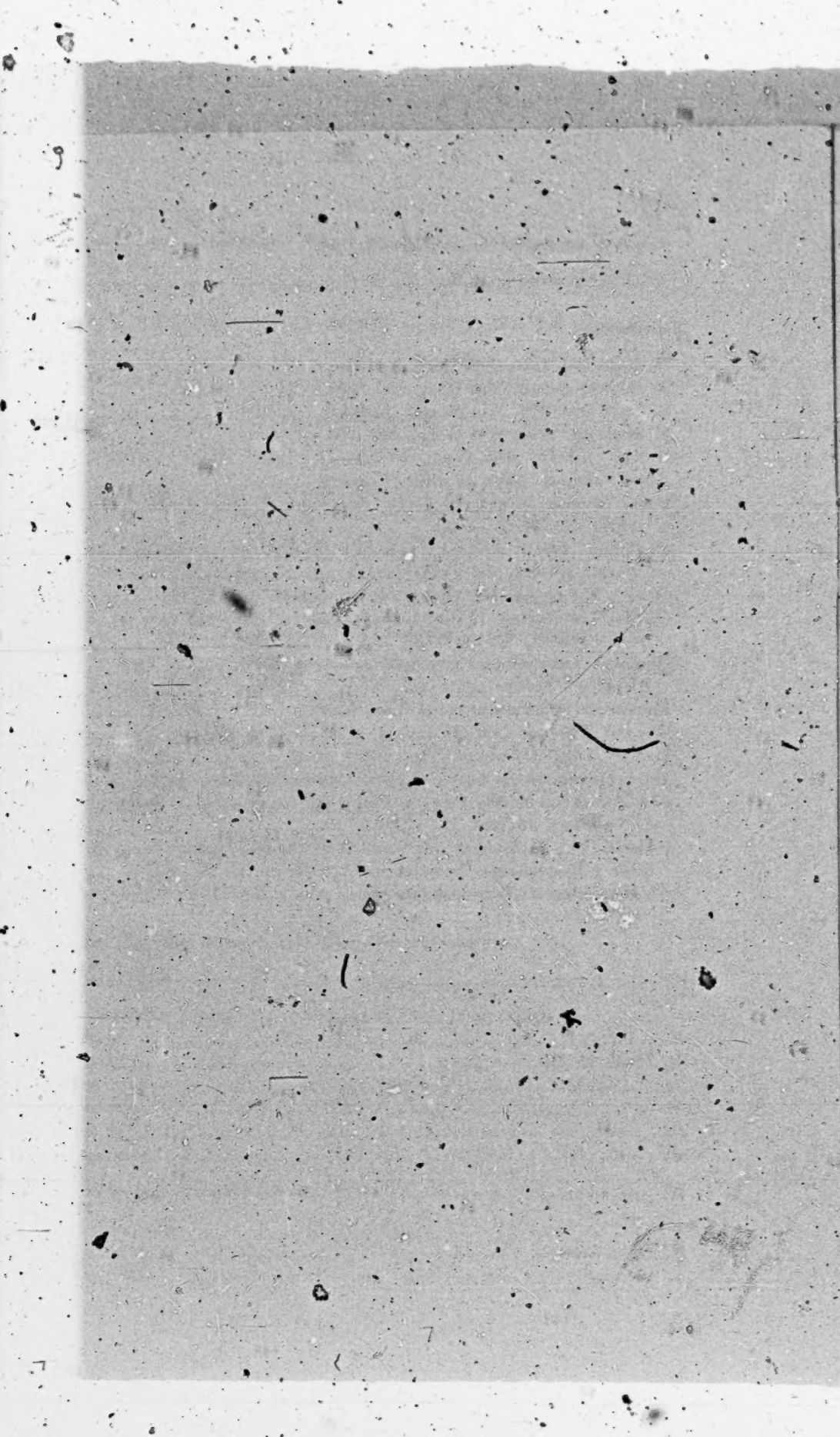
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IN THE

Supreme Court of the United States

OCTOBER TERM—1951

No. 178

UEBERSEE FINANZ-KORPORATION, A.G.,

Petitioner,

v.—

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

The opinion of the District Court (R. 41) is reported in 82 F. Supp. 602. The first opinion of the Court of Appeals, Circuit Judge Clark dissenting without opinion (R. 2326), is reported in 191 F. (2d) 327. The second opinion of the Court of Appeals "Memorandum on Appellant's Motion for Clarification of the Opinion of the Court" (R. 2338), Circuit Judge Clark not participating, is not reported.

Jurisdiction

The judgment of the Court of Appeals (R. 2328) was entered on February 8, 1951. An order of May 8, 1951 (R.

2337) extended the time for filing the petition for writ of certiorari to July 8, 1951. The petition for writ of certiorari was filed July 7, 1951 and was granted by an order filed October 15, 1951 (R. 2336). The jurisdiction of this court rests on 28 U. S. C. 1254(1).

Questions Presented

1. Whether a certain usufruct in the stock of a neutral corporation under which an enemy had during his lifetime the right to 80% of the dividends and perhaps the limited right to vote the stock to protect the dividends constitutes such ownership or enemy taint that the Alien Property Custodian may retain and confiscate all the American property of that neutral corporation in a case where the enemy never exercised either his right to collect dividends or attempted to vote the stock and where legal title to the shares, and all other rights in those shares (except the rights of the usufruct) were owned by neutrals.

2. Assuming that the Alien Property Custodian is not required to return to the neutral corporation any indirect beneficial interest in the vested property given to the enemy by the usufruct, may he retain in addition to such enemy interest rights and beneficial interest of a neutral which are separable from the enemy interest. In other words, should not the Custodian's right of confiscation of American property of a neutral corporation be limited to the confiscation of interests held directly or indirectly by an enemy?

Statutes Involved

The relevant portions of the Trading With the Enemy Act, as amended, are set forth in the Appendix.

Statement of the Case

The following brief statement we think presents all the facts necessary to decide the issue before this Court, *i.e.*, whether the property seized by the Alien Property Custodian can be confiscated under the Trading With the Enemy Act.[1]

The property involved is practically all the assets of petitioner, a neutral Swiss corporation. These assets consist of a majority interest in the stock of a brewing company and of a company engaged in the retail distribution of gasoline. These American corporations were not and could not have been used for the purpose of economic war. They were never used for the concealment of enemy assets. No dividends or credits of any kind were ever accumulated and held as assets of or for the use of any enemy government or of any enemy citizen.

The legal title to the entire capital stock (except neutral directors' three qualifying shares) of petitioner, which owned these seized American assets, has always been held by Fritz von Opel, a neutral citizen of Liechtenstein who resided in the United States from 1940 to 1950. Petitioner (the neutral Swiss corporation) never engaged during the war in any activity on behalf either of an enemy government or an enemy citizen. It accumulated no dividends or credits in Switzerland which were held for any enemy government or enemy citizen. No control over the petitioner either by voting stock, or by any other action, was exercised by an enemy during the war.

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1 The detailed facts set forth in the long record are concerned principally with the claim of the Government that the former German owners of the property made a sham gift in 1931 (R. 43). The District Court, however, found that a bona fide gift was made (R. 54-55), and thus eliminated from further consideration much of the material in the record.

The only enemy interest in petitioner's stocks arose out of a gift agreement (R. 1805-7) made in 1931 between Fritz von Opel and his German parents, Wilhelm and Marta von Opel, which obligated Fritz to pay his parents 80 per cent of the dividends on his stock in petitioner which had been purchased out of the proceeds of the gift. The dividends were payable only during the lives of the parents and only in the event that demand for them was made. Failure to demand dividends during the parents' lives forfeits the right to dividends which then become part of the gift to their son (R. 1807) and consequently are not property of the parents to be distributed as part of their estate. The purpose of the agreement reserving an option on 80 per cent of the income was to provide against possible need of the parents in their old age (R. 130, 134, 559, 1825). The parents were wealthy and never demanded the dividends.

In 1935, as security for the performance of the obligation of Fritz to pay his parents 80 per cent of the dividends on his stock, the certificates of petitioner's stock owned by Fritz were put in escrow under an arrangement which, in German law, is called a usufruct (neissbrauch). Since the term "usufruct" has caused some confusion in the opinions below, it is important to understand the precise legal and equitable rights which the German parents acquired under it.

Section 1081 of the German Civil Code[2] provides "Whenever a bearer security * * * is the object of a usufruct, then in such case the usufructuary and the holder of legal title jointly have the right of possession * * * " (R. 1989). That joint right to possession is secured by the same sort of

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2 Two English translations of the German Civil Code are available. Loewy, *The German Civil Code* (1909) and Chung Hui Wang, *The German Civil Code* (1907).

arrangement which in American law would be achieved by placing the stock in escrow. Thus Section 1082 provides that on request of either party the securities are "to be deposited with a depositary with the stipulation that the release of the instrument may only be requested jointly by the usufructuary and the holder of the legal title" (R. 1989).

The effect is to give the usufructuary the security of an escrow to carry out whatever agreement has been made with respect to his right to dividends, in this case 80 per cent during the lifetime of the usufructuary. At the same time it gives the legal owner of the stock joint control identical with control under similar escrow agreements under American law.

In addition, the usufructuary has a voice in the management of the property limited to the protection of his right to dividends. How that voice in the management is to be exercised is unsettled. There are no decided cases. Some commentators hold that the usufructuary has no voting right whatever; others hold that the usufructuary can only vote with regard to income; and a third position is that a usufructuary has all the voting rights. We set out below the finding of the trial court in this respect in its entirety.[3]

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3 "52. A right of usufruct, once established, is under German law an *in rem* right in property. A person having a usufruct in property has a right:

(a) to the enjoyment of the property or, in the case of money or securities, to the income from the securities;

(b) to co-possession of the property together with the person holding legal title to the property;

(c) to a voice in the management of the property insofar as the maintenance and preservation of the usufructuary's rights under subsection (a) above are concerned;

(d) to prevent the sale or disposition of the property as a result of his right to co-possession;

For purposes of decision in this case, it is unnecessary to speculate which of these three theories on the right of a usufructuary to vote would be adopted if presented to a German court. The German parents never claimed any right to vote and throughout the existence of the usufruct, the stock was voted by or for the neutral holder of legal title, Fritz von Opel (R. 1479, 2048, 2058).

The trial court found that up to 1940 major policies of petitioner were managed by Hans Frankenberg (R. 58), a Swiss banker who represented Wilhelm in 1935 for purposes of the escrow of the stock. This management was not accomplished by voting control. The control is inferred by the District Court simply because Frankenberg was consulted and his advice obtained (R. 2014). Even if the following of such advice could be called "control" by Wilhelm von Opel it ended before the United States was at war. Frankenberg prior to the war had become a resident of the United States in 1940. At the time of the outbreak of the war was an applicant for United States citizenship, which was later granted him. The trial court found that there was no evidence that he exercised any control over the petitioner after the United States entered the war or even after he came to the United States in 1940 (R. 58). The Government attempted to escape the effect of this finding by resting its case on a presumption that the management control, found by the trial court to have

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(e) the German Civil Code does not mention whether the usufructuary, for the protection of his income, has any voting rights. In the absence of a decided case the legal commentaries speculate in three different directions. One position is that title owner has all voting rights and the usufructuary no voting rights whatsoever. The second position is that the title owner has a voting right for all measures which have nothing to do with income while the usufructuary can vote in regard to income. The third position is that the usufructuary has all the voting rights."

been exercised by Frankenberg as agent for Wilhelm before he was an enemy and before the war, was presumed to continue during the war.[4] This was in effect a charge without evidence that Frankenberg had committed the grave offense of trading with the enemy while his application for citizenship was pending. The trial court therefore made it clear that its finding that Frankenberg's agency continued during the war only meant that his technical co-possession of petitioner's shares necessary to continue the usufruct was presumed to continue and not that actual control over the affairs of petitioner, as agent of an enemy, could be presumed to continue in these circumstances (R. 1782-3).

In the light of these facts, the findings of the court show that the following rights existed in the stock of the Swiss corporation at the outbreak of the war:

(1) Fritz von Opel, a neutral, had both legal title and beneficial ownership in the stock of the neutral corporation. That right was subject only to an option, never exercised, on the part of his parents to compel him to pay them on demand 80 per cent of the dividends during their lives. At the time of the seizure of the property in 1942 the parents were over sixty-five years of age. The father died in 1948 and the mother survives.

(2) The stock of the petitioner was delivered to a Swiss depositary in escrow as security for the future performance of Fritz von Opel's obligation to pay 80 per cent of the dividends to his parents if demanded.

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4 Under these circumstances the legal presumption is directly to the contrary and such agency is terminated by the outbreak of war. *Sutherland* v. *Mayer*, 271 U. S. 272, 285, 297; *Williams* v. *Paine*, 169 U. S. 55, 73; *Insurance Co.* v. *Davis*, 95 U. S. 425, 429-30.

(3) Both legal control and actual control of the corporation were in the neutral Fritz von Opel who continuously voted the stock; directly or by proxy, his right to do so being subject only to a disputed question of German law in the event his parents should demand the right to vote. This demand was never made.

(4) The American corporate stocks which the Office of Alien Property, seeks to confiscate under these circumstances was wholly owned by the neutral Swiss Corporation.

Specification of Errors to Be Urged

The petitioner urges that the Court of Appeals erred as set forth in the petition for a writ of certiorari (pp. 9-10).

The Opinions Below

The District Court held that the mere existence of the unexercised enemy usufructuary interest in the stock of the petitioner standing by itself justified the permanent confiscation of the American assets of petitioner. As two additional and make-weight considerations, the District Court stressed certain biographical facts concerning Fritz von Opel and a stock interest which petitioner held in a Hungarian subsidiary.

The court noted that Fritz von Opel lived in Germany from his birth in 1899 to 1929 and had participated in behalf of Germany in international sports events, as indicating that his roots remained in Germany. The court also stressed that, pursuant to the naturalization laws of Liechtenstein which require some payment, Fritz von Opel paid approximately $10,000 in connection with his naturalization there (R. 53). The court also stated that he did not take an oath of allegiance to Liechtenstein, which could be waived under the law, and

until 1941 indicated a continued interest in the welfare of Germany. The court, however, explicitly found that Fritz had not resided in Germany since 1929, that the total amount of time he spent in Germany between 1929 and 1939 did not exceed 10 per cent and then he spent no time whatever in Germany after 1939. The court also found that Fritz von Opel's status as a citizen of Liechfenstein was not open to attack and the court did not intimate that any sympathy he may have had for Germany existed after war was declared on the United States (R. 53).

The court found that petitioner owned the entire stock interest in Transdanubia Bauxite A.G., a Hungarian corporation, which shipped bauxite to Germany just prior to the war with the United States. The court did not, however, find that any bauxite was shipped after the war with the United States (R. 56). On the the contrary, the court found that in the spring of 1941, Fritz von Opel refused requests from the officers of Transdanubia for additional funds to continue mining operations (R. 57). The court admitted that there was no evidence that petitioner voted the stock in Transdanubia from 1940 through 1945, or that either the petitioner or Fritz von Opel received any income from Transdanubia at any time (R. 56-57). The court did not suggest that any question of trading with the enemy was involved under these circumstances. The only inference made adverse to the petitioner was that it never took any affirmative steps after war broke out to sever its relations with Transdanubia without indicating what possible steps could have been taken (R. 56).

The Court of Appeals did not mention or rely on these two make-weight considerations in the District Court decision. It held that the usufruct agreement itself gave to the enemy "ownership of the economic benefits of American business." It stressed the fact that delivery of the stock in

escrow to secure the enemy in that "ownership" was a right *in rem* in the Swiss stock. It concluded that because of this "right in rem" all the American assets of the Swiss neutral corporation could be confiscated.

Since the usufruct, which was the sole right which the enemy had, was only a life interest in 80 per cent. of the dividends and was clearly separable and could be seized without taking the assets of the neutral corporation, a petition was filed to clarify the opinion as to why, if any property of petitioner should be confiscated, the Custodian should not be limited to the seizure of the enemy owned usufruct, *i.e.*, the right to demand dividends and the exercise of whatever voice in management existed to protect that right. In answering this question the court mistakenly said that the interest of Fritz von Opel in the stock was a mere contract right against his father[5] and for that reason the American assets of petitioner, a neutral corporation which had never been utilized by the enemy, could be confiscated.

The trial court suggested that Fritz von Opel might have an independent suit against the Custodian for his neutral interest in the assets (R. 51). This question is not relevant here. We do not represent Fritz von Opel in this case. We are here asserting the right of a neutral corporation, not utilized by or under the command of the enemy, to prevent its own property from being confiscated in a case where it never lost its neutral status by becoming a cloak for the enemy.

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5 This is contrary to all the testimony, to the German law, and to the specific finding of the District Court which reads in part as follows: "Legal title to the 600 Opel shares passed to Fritz von Opel by the agreement of October 5, 1931." (R. 55.)

Summary of Argument

I

By the wartime amendment of Section 5(b) of the Trading With the Enemy Act, extending the vesting power to property here of all foreign nationals, Congress did not intend to authorize the Custodian to retain and confiscate the vested property of a neutral Swiss corporation not shown to be utilized by an enemy for economic warfare or concealment of enemy interests or, at least, not shown to be subject to enemy command and control.

The former opinion of this Court in this case makes it clear that the purpose of the amendment was to reach property utilized or actually controlled by the enemy. The petitioner was not in fact utilized by an enemy in any manner. Its stock was voted by neutrals. The management of the two American companies, producing and distributing beer and gasoline, was continued by the Custodian after he vested the stock. Moreover, the enemy's limited usufruct in petitioner's shares did not give an enemy power to utilize petitioner for enemy purposes even if that had been desired. The petitioner was not utilized to conceal or cloak any enemy interest in American property. The only enemy interest was in Swiss property, petitioner's bearer shares, and this interest was well known and not concealed.

The relevant statutory provisions and judicial decisions make it clear that actual *de facto* control of the corporate affairs by enemies in enemy territory or ownership of a majority of the stock is necessary to establish enemy control or enemy taint. Weighty practical considerations involving protection of American property abroad and friendly alien property here support this view. In this case no enemy control or ownership of petitioner's shares was present. Consequently the limited enemy

usufruct in petitioner's shares did not make petitioner an enemy.

II

Even if the enemy usufruct in petitioner's shares, at all times located in Switzerland, can be confiscated any separable neutral interests in petitioner's property owned by neutrals should be returned. If petitioner's shares were in the United States the Custodian could vest the enemy interest in the shares. In other words where, prior to the war, stock is innocently pledged or put in escrow to secure a collateral enemy obligation only the interest of the enemy can be confiscated.

III

The fact that the neutral owner of petitioner's shares was born in Germany and was a German citizen before he left Germany and became a naturalized citizen of Liechtenstein in 1939 is irrelevant on the question whether petitioner is an enemy. Similarly irrelevant is the fact that petitioner owned all the stock of a Hungarian corporation in view of the trial court's determination that petitioner did not carry on trade with the enemy within the meaning of the Act.

Argument

The Fifth Amendment protects friendly aliens, including Swiss corporations, from confiscation of their property by the Government of the United States. This protection is removed only if a hitherto friendly alien becomes an enemy as defined in the Trading With the Enemy Act. The Custodian's power to confiscate enemy property is wholly statutory and limited to the terms of the Act. His claimed authority to confiscate all of petitioner's United States property depends entirely upon whether or not

petitioner is an enemy or ally of enemy within the meaning of the Act. The petitioner, which since 1932 has invested practically all of its assets in the United States, in reliance on its economic and governmental stability, submits that it has never been, or acted as, an enemy or ally of enemy of the United States within the meaning of the Trading With the Enemy Act or otherwise.

I

In the absence of any enemy utilization of a neutral corporation or any enemy voting control of its stock, its property, if seized by the Alien Property Custodian, should thereafter be returned.

The effect of the opinion in the court below is to hold that the mere delivery in escrow of stock in a neutral corporation by a neutral stockholder long prior to the war, in order to secure the future performance of a personal agreement between that stockholder and an enemy, justifies the confiscation of the entire American assets of such neutral corporation.

Such an extreme view can only be supported on the theory that the 1941 amendment of Section 5(b) of the Trading With the Enemy Act (amended by Section 301 of the First War Powers Act of December 18, 1941, c. 593, 55 Stat. 838) has made a revolutionary change in our attitude towards neutral corporations; that the aim of seizure of the American assets of neutral corporations is not protection against economic warfare or against concealment of enemy assets but rather to reach out and confiscate all of the American assets and business of those neutral corporations in order to confiscate any German interests in such corporations. This we think was not

intended by Congress in amending Section 5(b) in the absence of utilization, or at least in the absence of control, of the neutral corporation by enemies.

The petitioner made its investments in the vested shares in the two American companies which sell beer and gasoline, in 1932 and 1933, long before the war. When petitioner purchased the controlling stock interest in both companies it continued their former American management (R. 2026-28). The Custodian has continued the same management which demonstrates that the Custodian was convinced that this management was never a cloak for the enemy (R. 1183). Report, Office of Alien Property for the Fiscal Year Ending June 30, 1945, page 89.

At the outset the fundamental distinction must be drawn between the vested American assets of petitioner, a neutral corporation, and vested American assets owned directly by enemy nationals which may be not only vested but also confiscated by virtue of such ownership. It is submitted that in the present case where petitioner is the sole owner of the vested property, and the only asserted enemy interest is a limited usufruct in its shares, the petitioner does not become an enemy within the meaning of the Act unless it is utilized by the enemy either as a cloak for enemy assets or for economic warfare. Section 2 of the Act defines a corporate enemy as including a corporation incorporated in enemy territory or incorporated elsewhere outside the United States and doing business in enemy territory. Section 7(c) authorizes vesting of any property found to be "owing or belonging to or held for, by, or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy . . . ." Section 9(a) provides that any person not an enemy or ally of enemy may sue to recover vested property. Under these original provisions property of a neutral corporation could not be confiscated because

of enemy ownership of even a majority of its stock. The Custodian's contention that because of such stock ownership alone the vested property was held "on behalf of" the enemy stockholders was rejected in the absence of actual utilization of the neutral corporation's property by the enemy. *Behn, Meyer & Co.* v. *Miller*, 266 U. S. 457. The Custodian was restricted to obtaining the enemy owned stock. *Hamburg-American Co.* v. *United States*, 277 U. S. 138, 140.[6]

The reason for this policy was not tenderness towards our enemies. It was rather consideration of the economic interests of allies and friendly neutrals. To seize the American assets of a corporation organized in a neutral country on the sole ground that prior to the war an enemy had acquired an interest in its stock is a serious injury to the neutral country. It interferes with the wealth which is subject to taxation in that country, it puts a handicap upon the trade of the corporations domiciled there which is also a source of wealth. And finally it takes away dollar balances where the assets of a neutral corporation are seized in the United States. Such injury to neutral interests was not contemplated by the original Trading With the Enemy Act.

The 1941 wartime amendment of Section 5(b) extended the vesting power to the property of any foreign national.

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6 Even in the case of property directly owned by private enemy nationals vested during the hostilities it has been the practice of modern nations to return it or arrange for compensation after the war. See generally for the history of treatment of enemy property by the United States: John Dickinson, *Enemy Owned Property: Restitution or Confiscation*, 22 Foreign Affairs, 126 (1943); Gathings, *International Law and American Treatment of Alien Enemy Property* (1940); John Bassett Moore, *International Law and Some Current Illusions* (1924), pp. 14-25.

It is clear that Section 5(b) was not amended in derogation of the sound principle not to inflict injury on allies or neutrals because of the mere existence of a German interest in the stock of a neutral corporation. On the contrary, the amendment was passed only to protect against neutral corporations engaging in economic war or concealment of enemy assets under the cloak of neutrality.[7]

The former rule was changed not because it was wrong in principle, but because it was too inflexible to afford adequate protection. This is clear from the former opinion in this case. In discussing the change made in Section 5(b), Justice Douglas said (332 U. S. 484):

> "* * * The scheme of the Act as it was then drawn was 'to seize the shares of stock when enemy owned rather than to take over the corporate property.' *Hamburg-American Co.* v. *United States*, 277 U. S. 138, 140.
>
> That was at least one respect in which the Act had a 'rigidity and inflexibility' that was sought to be cured by the amendment to §5(b) in 1941. See H. R. Rep. No. 1507, 77th Cong., 1st Sess., p. 3. It was notorious

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[7] The report of the Judiciary Committee on Title III containing the amendment of §5(b) stated (Senate Report No. 911, 77th Cong., 1st Sess., p. 2): "This provision of the bill to a considerable extent follows the operation of existing law and is a logical extension of the present foreign property control system which has been operating very satisfactorily for almost two years. The extension could be put into immediate operation with a minimum amount of trouble or dislocation of legitimate activities. It is essential that the Government have this power, a power exercised by every other wartime government and exercised by this Government during the last war." Thus it is clear that the principal purpose of the amendment was to extend the vesting power but there is no intimation of an intention to extend the confiscation power to property of neutrals not acting for an enemy.

that Germany and her allies had developed numerous techniques for concealing enemy ownership or control of property which was ostensibly friendly or neutral. They had through numerous devices, including the corporation, acquired indirect control or ownership in industries in this country for the purpose of economic warfare. Sec. 5(b) was amended on the heels of the declaration of war to cope with that problem. Congress by that amendment granted the President the power to vest in an agency designated by him 'any property or interest of any foreign country or national thereof.' *The property of all foreign interests was placed within reach of the vesting power not to appropriate friendly or neutral assets but to reach enemy interests which masqueraded under those innocent fronts.*

Thus the President acquired new 'flexible powers' (H. R. Rep. No. 1507, supra, p. 3) to deal effectively with property interests which had either an open or concealed enemy taint." (Emphasis supplied.)

The Court was precise in pointing out why the former rule was inflexible. The reason was not that it failed to permit confiscation of minority enemy interests in neutral corporations. The Court explains the loophole that the amended Section 5(b) was intended to close was the fact that under the former Act (332 U. S. 486):

"All a corporate claimant would need do to recover the property seized would be to show that it was organized in this country or in some friendly or neutral country and was not doing business within the territory of an enemy or any of its allies. The fact that it was owned or controlled by enemy interests and might sap the strength of this nation through economic warfare

would be immaterial. We agree that a construction so destructive of the objectives of the 1941 amendment to §5(b) must be rejected."

* * * * *

"We find not the slightest suggestion that Congress was concerned under this Act with property or controlled by friendly or neutral powers and in no way utilized by the Axis. Those interests were not waging economic warfare against us."

To the same general effect is the following statement from the opinion (332 U. S. 488):

"The power of seizure and vesting was extended to all property of any foreign country or national so that no innocent appearing device could become a Trojan horse."

The Court did not define enemy taint in this opinion but it did clearly enunciate that the purpose of the amendment was protection, and not enlarged powers of confiscation at the expense of a neutral corporation which was not utilized by the enemy during the war.

Here we have no concealment of enemy assets and no utilization for economic warfare.[8] If the true purpose of the amendment is protection, it follows that the property

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8 This case is wholly unlike the cases more usually presented for judicial determination in which enemy interests have been concealed or in which the enemy has made a transfer of property in contemplation of seizure. *Standard Oil Co.* v. *Clark*, 163 F. (2d) 917 (C. A. 2) c. d., 333 U. S. 873; *Kaneme Fujino* v. *Clark*, 172 F. (2d) 384 (C. A. 9), c. d., 337 U. S. 937; *American Transatlantic Co.* v. *United States*, 83 F. Supp. 832 (Ct. Cl.); *Draeger Shipping Co.* v. *Crowley*, 55 F. Supp. 906 (S. D. N. Y.). In this case the gift was made in

of the neutral corporation must be utilized by the enemy or the enemy must exercise voting control. The Custodian may, of course, seize the assets on suspicion of such utilization. But when the neutral corporation affirmatively shows that it was not so used the property must be returned.

Relevant legislative provisions.—Our position is supported by the statutory provisions permitting the return of vested property to a neutral corporation where the enemy control or ownership was less than 50 per cent of the corporate stock after December 7, 1941, provided that it was not actually utilized by the enemy.[9]

1931. All of the facts at all times have been completely revealed by the petitioner, which made all of its records in Switzerland available to the Government, and by the individuals concerned. Similarly, *Beck* v. *Clark*, 182 F. (2d) 315 (C. A. 2), is wholly different because it involved a sale of American shares by German owners in Germany after the beginning of the European war in November, 1939, and a concealed reservation of the right to buy the stock back. No reservation whatsoever of the rights transferred to Fritz von Opel was made and there was no concealment.

9 Section 32(a)(3)(E) of the Act, noted in the former opinion (332 U. S. 490), provides that administrative return of vested property shall not be made to "a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned" by enemies. A cognate provision, Section 32(a)(3) provides for the return of vested property upon a determination that it was not after September 1, 1939 "held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any" enemy. The phrase "enemy taint" in the legislative history first appears in the discussion of the bills which became Section 32. Senate Rep. No. 920 of February 4, 1946 (p. 8) on H. R. 4571. House Rep. No. 1219 of November 20, 1945 (p. 8), Hearings on H. R. 3750 (77th Cong., 1st Sess.), p. 33.

The petitioner's position is further supported by the Brussels Agreement of December 5, 1947, approved by the Joint Resolution of September 28, 1950, c. 1094, 64 Stat. 1079 (50 U. S. C. App. 40), in respect of conflicting Allied claims to German property. Article 11(b) defines a German enterprise as one in which at least 50 per centum of the voting rights, stock, or other proprietary interest is owned by German enemies or in which German enemies "*directly* control policy, management, voting power or operations of the enterprise * * *."[10]

These statutory provisions indicate the intent of Congress to require actual enemy ownership of at least 50 per cent. of the stock of a neutral corporation or direct control of its policy and operation to condemn it as enemy tainted. This represents the policy of Congress even in cases of administrative return under Section 32 in which a judicial remedy may not be available. It is a clear indication of what Congress intended should be returned where, as here, the neutral corporation is given a right to sue under the Act. See also Section 9(b)(11) of the Act, *infra* page 41.

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10 Article 11(b) provides that an enterprise shall be deemed German controlled if German enemies hold directly or indirectly (Dept. State Bull., Vol. 18, No. 444, Jan. 4, 1948, p. 6)

> "(i) 50 per cent. or more of the voting rights, outstanding capital stock or other proprietorship interests, or (ii) participating rights in a voting trust arrangement which rights represented 50 per cent. or more of such voting rights, outstanding capital stock or other proprietorship interests; or if at the material date German enemies directly controlled the policy, management, voting power or operations of the enterprise."

This and similar international agreements are discussed in Senate Report No. 2508, 81st Cong., 2nd Sess., 2 U. S. Code Cong. Service, p. 3968 (1950); Domke, *The Control of Corporations*, The International Law Quarterly, Vol. 3 (1950), pp. 52, 55-56.

The English decisions.—The English decisions never followed the rigid rule of the *Behn, Meyer* decision, *supra.* They adopted the more practical principle that only actual control of a neutral corporation by enemies residing in every territory made a neutral corporation an enemy. At the same time they held that an enemy interest short of *de facto* control was not sufficient to condemn a neutral corporation as an enemy.

The decisions treat a neutral or domestic corporation as an enemy either because its conduct constitutes "doing business" in enemy territory within the statutory definition or because its conduct in enemy territory, such as management of its corporate affairs in enemy territory, gives it a residence in enemy territory thus making it a statutory enemy. *De facto* control of the corporation must be exercised in enemy territory. It has been stated that "the true test is control, the analogue of that residence which invests an individual residing in an enemy country with enemy character." *Re Badische Co. Ltd.* [1921] 2 Ch. 331, 371. See also *Daimler Co. Ltd.* v. *Continental Tyre & Rubber Co.* [1916] 2 A. C. 307, 303, 351; *Overseas Trust Corp. Ltd.* v. *Godfrey* (1940), South African Law Reports, Cape of Good Hope Provincial Division, 177, 186; cf. *Fritz Schulz Jr. Co.* v. *Raimes & Co.*, 100 Misc. 697, 166 N. Y. Supp. 567, 574 (Irving Lehman, *J.*)[11].

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11 The characterization of a domestic or neutral foreign corporation as an enemy by reason of a commercial domicile in enemy territory is discussed in Ernest Schuster, *The Nationality and Domicil of Trading Corporations, Grotius Society Proceedings, Transactions,* Vol. II, pp. 57, 84 (1917); cf. E. J. Cohn, *German Enemy Property,* International Law Quarterly, Vol. 3 (1950), p. 548; Picciotto, *Alien Enemy Persons, Firms and Corporations in English Law,* 27 Yale Law Journal, 167 (1917). The concept of enemy taint also

It is this practical solution of the international problem of seizure of a neutral corporation's property that Congress accepted as shown by the legislation we have outlined above.

Practical Considerations.—These are the strongest practical reasons for increasing rather than decreasing protection of foreign investments from confiscation. The increased protection promotes and encourages expansion of world trade in order to promote a stable world social order which is the basic policy of the United States. In this respect the precedent which the Government here urges has dangerous implications. Suppose, for example, that as a result of the present difficulties Iran or Egypt should declare war on Great Britain. It would follow from the Government's position in this case that Iran or Egypt could seize or confiscate all of the assets of American corporations within their borders if these corporations happen to represent a substantial British investment, or if their stock had been pledged or put in escrow to secure a British loan.

Any test other than utilization or actual control leaves the assets of neutral corporations subject to confiscation within the uncontrolled discretion of the Custodian and the courts. There are no possible standards for the evaluation of minority interests if the test of utilization or control is not relevant. Here we have something like a pledge to secure an unexercised option to demand dividends. In other cases the interests of the enemy might run from 1%

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appears to some extent in prize cases. *The Unitas* [1950], A. C. 536; *Part Cargo ex. M. V. Glenroy* v. *Spencer* [1945], A. C. 124; *The Hamborn* [1919], A. C. 993; *The Proton* [1918], A. C. 578; *The Buena Ventura*, 175 U. S. 384; *The Wren*, 73 U. S. 582; *The Venus*, 8 Cranch. 253; Hackworth, VI *International Law*, 512; Domke, *The Control of Alien Property* (1947), p. 104.

to 49% of the stock. There is no way of evaluating the comparative importance of such minority interests in the abstract, in the absence of actual voting control or use by the enemy. Such absence of reasonable standards for confiscation would have dangerous possibilities for our own foreign investments.

We submit that the purpose of amended Section 5(b) was solely to prevent corporations organized in neutral countries from being utilized as a cloak for enemy assets or to wage economic warfare. If this be true the purpose of the Act is accomplished by seizure of the neutral property during hostilities on suspicion of its subsequent return if it be shown that it was neither utilized by nor controlled by the enemy.

However, if the position we have just outlined is not upheld, and if minority interests in a neutral corporation justify the confiscation of all of its assets, we submit there must be some limit to that power. And we think that limit was reached and exceeded here. Here we have in substance nothing but an escrow of stock of a neutral corporation to secure the performance of an agreement which does not concern the management of the corporation until some future time (1) if and when an option to demand dividends is exercised, and (2) if and when there is a demand to vote the shares to protect a right to dividends, and (3) subject to the final and further legal contingency that there is no decided case upholding such a right to vote and respectable authority against it. Thus the German interest is subject to contingency piled on contingency piled on contingency.

Apart from a possible right to vote petitioner's shares, the only other control which could be exercised in war time would be through persuasion of Frankenberg in America to commit a criminal offense by trading with the enemy.

There is no such evidence and not even such a possibility because of the trusted American management of the American companies. We think that the use of the word "enemy taint" by Justice Douglas in the former opinion necessarily implies the following conclusions:

1. A neutral corporation which is owned and controlled by enemies and utilized for the purpose of assisting an enemy's war effort is clearly a "trojan horse" and, therefore, precisely within the purview of the Supreme Court opinion.

2. A neutral corporation which is owned and controlled by enemies, which was not actually used to assist in the enemy's war effort, but the evidence indicated that it was designed and set up for that purpose, would appear to fall within the purview of "enemy taint." (It could even be admitted that if the claimant failed to establish by the preponderance of evidence that it was not so designed then the Alien Property Custodian could keep and retain the property as "enemy tainted.")

3. A neutral corporation which is owned and controlled by enemies but which was not used for the purpose of assisting the enemy's war effort and where it has been affirmatively established by the claimant that it was designed and established for a purpose other than to be utilized for the enemy's war effort, would appear to be a doubtful case as to whether it would fall within the purview of "enemy taint."

4. A neutral corporation which is not owned or controlled by enemies, which was not used to aid and abet the enemy in its war effort, and which the claimant has established through uncontroverted evidence was acquired for the purpose of precluding the enemy from obtaining or

utilizing its assets, clearly does not fall within any concept or any definition of "enemy taint."

This case must be classified within the fourth of the above categories.

Therefore, we assert that even if control or utilization is not the test of enemy taint, there must be some limit to the right of confiscation and this case certainly goes beyond that limit.

II

At the most the Custodian may confiscate the separable enemy usufruct and not petitioner's entire vested property.

Petitioner has contended, Point I, *supra*, that the asserted usufruct in petitioner's shares is wholly insufficient to characterize petitioner as an enemy and to confiscate any of its vested assets in the absence of concealment of enemy interest or utilization of petitioner by the enemy. But even if we assume that because of the usufruct in the Swiss shares there is an enemy interest in the American assets which can be confiscated here, certainly confiscation cannot go beyond that interest. The rights of the usufructuary are as separable from the rights of the neutral owner of the Swiss shares as the rights of pledgee and pledgor. Confiscation of the usufructuary interest will remove all enemy rights and vest them in the Custodian. There is no possible justification for going further.[12]

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12 The normal method for liquidation of a German interest in Swiss shares (instead of seizing the property here of the Swiss corporation) was provided by the Washington Accord, the international agreement of May 25, 1945, between Switzerland and other Allied Powers (Dept. State

This is not a case where part of the stock of a neutral corporation is held by enemies and part by citizens or friendly aliens. In such a situation if the corporation by virtue of enemy stock ownership had become no longer neutral because of the utilization of its property on behalf of the enemy, or had become subject to command and actual control by the enemy, the entire corporate assets in the United States might be seized and the corporation itself could not recover them. In such a case the question would arise whether the non-enemy stockholders could not recover their *pro tanto* interest in the vested assets. But that question is not presented here. The legal title to all the stock, except directors' qualifying shares, is in the neutral. These shares have been placed in escrow in a bank deposit box in Zurich to secure the performance of a collateral obligation with which the corporation itself is not concerned. The enemy's interest is entirely separable and the Custodian is limited to the rights given to the enemy by the escrow agreement.

For example, had petitioner's stock been deposited in an American bank under the same terms and conditions we have no doubt that the enemy's interests could have been seized, and the depositary notified that from the time of vesting the Custodian had acquired all rights of the German parents. The Custodian could have demanded dividends during the lifetime of the parents. He could have

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Bull., Vol. 14, No. 365, dated June 30, 1946, p. 1121), under which Switzerland has liquidated German property in Switzerland for the benefit of the Allies. The Washington Accord, the Brussels Agreement, *supra*, p. 20, and the Act provide a comprehensive scheme for control of enemy property under which an enemy interest in Swiss shares is dealt with by seizure of that interest in Switzerland rather than by seizure here of all of the American property of the Swiss corporation.

exercised such voice in the management as the law permitted. But it is unbelievable that he could confiscate any more.[13]

Here the stock was in Switzerland. But assume the novel doctrine that Section 5(b) authorized the Custodian to reach such German interests in stock of neutral corporations held in escrow abroad by seizing the corporate assets in this country. Certainly it cannot be contended that because the stock itself is not available the right to confiscate is enlarged beyond what it would have been had the stock of the neutral been in this country.

The extent of the enlargement of that right to seize and retain more than the enemy interests indulged by the courts below in this case is fantastic. The enemy had the right to 80 per cent of the dividends from this corporation during the lifetime of two people both of whom were over

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13 The District Court saw fit to disbelieve that the Opel parents waived their usufructuary interest (R. 60) although, petitioner submits, the waiver was established by the uncontradicted testimony (R. 39, 456, 1001, 1053, 1611) and documentary evidence (R. 1825, 1899, 1907, 1912, 1950). Moreover the petitioner has contended that the usufructuaries never obtained and maintained that copossession of petitioner's shares, excluding the owner from independent access to them, which under German law was the absolutely essential legal prerequisite to the establishment and maintenance of the usufruct. The District Court correctly found that such copossession was necessary under German law (R. 57, 314, 1351) but incorrectly concluded that such copossession was established by delivering a key to Frankenberg for Fritz Von Opel's deposit box where the shares were kept. Such copossession was not established because at all times Fritz von Opel had independent access to his deposit box, and furthermore Fritz von Opel gave Frankenberg access to the box not alone but only together with Adolph Gang, another director of petitioner (R. 816, 857, 2060).

65 years old at the time of vesting. By invoking amended Section 5(b) the Custodian seeks to confiscate practically the entire corporate assets worth perhaps a hundred times the value of the enemy interest.

The error of the court below lies in its misconception of the word "taint." It is treated as if it were some kind of infection which spread from the Swiss shares in escrow to the assets in America as rot spreads through an apple, and thus rendered them unfit to be retained by a neutral corporation even though the neutral corporation had in no way subjected itself to any control by the enemy.

What the court in the former *Uebersee* case clearly means is that enemy taint exists where a corporation has so conducted itself or been so directed by the enemy that it has lost its neutral status by becoming a cloak for the enemy. This did not happen here. The neutral corporation which seeks to get back its assets here was never enemy directed, utilized or controlled. It never lost its neutral status.

If, therefore, Section 5(b) can be construed (which we deny) as a method of reaching enemy interests in pledged or escrowed certificates of stock which certificates of stock cannot be reached in this country, it is an unbelievable extension of that novel doctrine to say that interests greater than that of the enemy pledgee or beneficiary of the escrow can be confiscated.

The court below laid great emphasis on the fact that the escrow agreement created a right *in rem* in the enemy. But even so, on what theory can anything more than that particular right *in rem* be confiscated by the Custodian? It is like saying the mortgage on property to an enemy taints the equity which the mortgagor has in the property after the debt is satisfied.

The consequences of such a precedent are far-reaching indeed. It abandons the sound theory that the only reason

for confiscating a neutral corporation's property is that it has become an enemy or ally of the enemy. It subjects neutral corporations to the destruction of their entire property because of some entirely collateral interest which an enemy has in its negotiable certificates of stock held in escrow to secure the performance of agreements by its non-enemy stockholders. Certainly a neutral corporation does not become tainted as an ally of the enemy because its stockholders pledged their stock to a German unless as a result of that pledge the corporation becomes controlled by German enemies.

Petitioner submits, therefore, that at least its vested property should be returned subject at most to retention of the usufructuary right to 80 per cent of the dividends for the lives of the German beneficiaries.

III

The two make-weight considerations relied on by the District Court to support its conclusion of enemy taint of petitioner are actually irrelevant to that issue.

The District Court below affirmatively held that the Liechtenstein citizenship of Fritz von Opel, petitioner's principal stockholder, was valid (R. 52).[14] However, the Court stressed the fact that Fritz von Opel paid approximately $10,000 in connection with obtaining his citizenship, was in Liechtenstein only very briefly, and never took an oath of allegiance to Liechtenstein or formally renounced his German citizenship (R. 49).

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14 The Court of Appeals made no reference to and apparently placed no reliance on these make-weight considerations but relied solely on the view that the usufruct alone in petitioner's shares constituted enemy "beneficial ownership" of petitioner's assets warranting their confiscation.

The Liechtenstein law required a payment to be fixed by the Government for acquisition of citizenship (R. 53, 1953). It was not disputed that under German law upon acquisition of Liechtenstein nationality Fritz von Opel lost German nationality unless it was expressly reserved by application approved by the German government (R. 1097). Fritz von Opel testified that he never applied for such approval (R. 392) and other evidence supported his testimony and proved his desire to renounce German nationality (R. 1617). Indeed, there was no way of formally renouncing citizenship except by failing to apply for approval. Complete severing of his ties with Germany is further supported by the fact that in spite of his acquaintances and connections in Germany, Fritz von Opel in 1929 left Germany and abandoned his residence there and returned only for brief visits amounting to only ten per cent. of the time (R. 52). Finally, it should be noted that in 1940, after war broke out in Europe, he came to the United States, where he resided until 1950.

Of course, prior to the war with the United States it was natural that Fritz von Opel should have interest in, and sympathy for, the welfare of Germany. The court, however, did not find that he had any Nazi sympathies and affirmatively limited its findings (R. 53) concerning his German sympathies to the period before the war with the United States. This was very necessary because, as the record shows, he was not a Nazi sympathizer (R. 392, 2199-2211) and aided the United States war effort (R. 393).

There is, therefore, no basis in the record for utilizing Fritz von Opel's former nationality and his Liechtenstein citizenship as evidence that he was a person likely to submit to enemy control and on such evidence concluding that petitioner was enemy tainted.

An additional circumstance stressed by the District Court as evidence of enemy taint was the fact that petitioner owned a Hungarian subsidiary, Transdanubia Bauxite, A.G., which mined bauxite in Hungary. In 1939 petitioner through a Swiss bank arranged for a guarantee of a Hungarian bank loan to Transdanubia in the amount of approximately $7,000. The Court concluded in its opinion (R. 50):

> "While it is true there is no showing that plaintiff executed any control over it's subsidiary after December 1941, it appears plaintiff never took affirmative steps to sever its relations with Transdanubia. Thus plaintiff had an interest in and an association with an enemy corporation during World War II which apparently supplied war materials to the enemies of the United States."[15]

Certainly the ownership of stock by a parent corporation does not constitute doing business by the parent in the state where the subsidiary does business.[16] Even limited

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15 The trial court said "apparently" because there was no evidence of such activity after war between the United States and Germany commenced.

16 *Peterson* v. *Chicago, R. I. & P. R. Co.*, 205 U. S. 364, 391; cf. *Cannon Manufacturing Co.* v. *Cudahy Packing Co.*, 267 U. S. 333; *People's Tobacco Co.* v. *American Tobacco Co.*, 246 U. S. 79; *Echeverry* v. *Kellogg Switchboard & Supply Co.*, 175 F. (2d) 900 (C. C. A. 2). The definition of "doing business" in these decisions was the meaning of "doing business" intended by Congress in using this phrase in Section 2 of the Trading with the Enemy Act. Senate Report No. 113, p. 4 and Hearings, pp. 136-7 on H. R. 4960 (65th Cong., 1st Sess.). In *Compagnie Internationale de Produits Alimentaires* v. *Miller*, 266 U. S. 473, the case was remanded to determine whether the Swiss corporation had been "doing

activities in enemy or enemy-occupied territory necessary to preserve a corporation's entity is not "carrying on business."[17]

The District Court, therefore, correctly held that the relationship of petitioner with its Hungarian subsidiary was not trading with the enemy preventing recovery of the vested assets (R. 49). The only fault the court found was with petitioner's failure to take affirmative steps to sever its relationship with its subsidiary. The court did not point out what these affirmative steps might be. The only one we can think of would have been to transfer the subsidiary to the Hungarian government or sell it to a Hungarian citizen. That certainly would have been an act friendly to the enemy and could not have improved Uebersee's position. The only other step we can conceive of is to sell the subsidiary in enemy territory to some neutral, an obvious impossibility during wartime.

We, therefore, submit that neither of the make-weight considerations advanced by the trial court in behalf of its position had any bearing whatever on enemy taint.

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business" in Germany. The Supreme Court of the District of Columbia stated (Equity No. 42058 unreported decision of November 6, 1928, Bailey, *J.*): "It is clear that Congress in using the words 'doing business' had in mind the construction placed upon them by the Supreme Court and I think that Court in the case of *Cannon Mfg. Co.* v. *Cudahy Packing Co.* is conclusive of this case. It results therefore that the plaintiff is led to the relief sought in its bill."

[17] *Central India Mining Company* v. *Societe Coloniale Anversoise*, [1920] 1 K. B. 753; *Re Hilckes, ex parte Muhesa Rubber Plantations*, [1917] I K. B. 48, Webber, *Effect of War on Contracts* (2nd Ed. 1946), page 114; Howard, *Trading with the Enemy* (1943), page 12; McNair, *Legal Effects of War* (1948), p. 65.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the decision of the Court of Appeals should be reversed.

Respectfully submitted,

THURMAN ARNOLD,
EDWARD J. ENNIS,
HARRY M. PLOTKIN,
Attorneys for Petitioner,
Uebersee Finanz-Korporation, A.G.

ARNOLD, FORTAS & PORTER,
Ring Building, Washington, D. C.

GALLAGHER, OSHERMAN, CONNOR & BUTLER,
Bowen Building, Washington, D. C.

EDWARD J. ENNIS,
165 Broadway, New York, N. Y.
Of Counsel.



APPENDIX

Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended (50 U. S. C. App. 1-40) provides in part:

Section 2. The word "enemy" as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States, and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy".

The words "ally of enemy", as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require may, by proclamation, include within the term "ally of enemy".

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Section 5 (as amended by Section 301 of the First War Powers Act of 1941, c. 593, 55 Stat. 839) provides in part:

* * * * *

(b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest of property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign prop-

erty, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision. * * *

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Section 7 provides in part:

* * * * * *

(c) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

* * * * * *

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

Section 9 provides in part:

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been convened, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from any enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any

right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principle place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so con-

veyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time the return of such money or other property hereunder a citizen or subject of any such nation or State or free city, or

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(11) A partnership, association, or other unincorporated body of individuals having its place of business within any country other than Germany, Austria, Hungary or Austria-Hungary, or a corporation organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however,* That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection; * * *.

Sec. 32(a). The President, or such officer or agency as he may designate, may return any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, whenever the President or such officer or agency shall determine—

* * * * * *

(2) that such owner, and legal representative or successor in interest, if any, are not—

* * * * *

(E) a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) hereof: *Provided*, That not withstanding the provisions of this subdivision (E), return may be made to a corporation or association so controlled or owned, if such corporation or association was organized under the laws of a nation any of whose territory was occupied by the military or naval forces of any nation with which the United States has at any time since December 7, 1941, been at war, and if such control or ownership arose after March 1, 1938, as an incident to such occupation and was terminated prior to the enactment of this section; and

(3) that the property or interest claimed, or the net proceeds of which are claimed, was not at any time after September 1, 1939, held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any person ineligible to receive a return under subsection (a) (2) hereof; * * *.

Joint Resolution of September 28, 1950, c. 1094, 64 Stat. 1079 (50 U. S. C. App. 40) provides:

The President, or such officer or agency as he may designate, is authorized to conclude and give effect to agreements to further the amicable and expeditious settlement of intercustodial conflicts involving enemy property, subject to the following:

(1) The authority granted in this section shall extend only to agreements with governments with which the United States was not at war in World War II.

(2) Such agreements shall be in accordance with the policy of protecting and making available for utilization the American and nonenemy interests in such property and further the elimination of enemy interests in such property and the efficient administration and liquidation of enemy property in the United States.

(3) For the purposes of this section, the United States as to any intergovernmental agreements hereafter negotiated shall seek treatment equal to that accorded United States nationals for persons who, although citizens or residents of an enemy country before or during World War II, were deprived of full rights of citizenship or substantially deprived of liberty by laws, decrees, or regulations of such enemy country discriminating against racial, religious, or political groups: *Provided*, That on the effective date of this Resolution such persons were (1) permanent residents of the United States and (2) had declared their intention to become citizens of the United States in conformity with the provisions of the Nationality Act of 1940, as amended; and that such persons shall have acquired citizenship of the United States prior to the effective date of any intergovernmental agreement hereafter negotiated.

(4) Reimbursement to the United States by other governments pursuant to such agreements shall be administered as vested property: *Provided*, That nothing contained in this section shall hinder, restrict or limit the payment of claims from the War Claims Fund established by section 13 of the War Claims Act of 1948 * * * as amended.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1951

No. 178

UEBERSEE FINANZ-KORPORATION, A.G.,
Petitioner,

v.

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR PETITIONER.

THURMAN ARNOLD,
EDWARD J. ENNIS,
HARRY M. PLOTKIN,
Attorneys for Petitioner,
Uebersee Finanz-Korporation, A.G.

ARNOLD, FORTAS & PORTER,
Ring Building, Washington, D. C.

GALLAGHER, OSHERMAN, CONNOR & BUTLER,
Bowen Building, Washington, D. C.

EDWARD J. ENNIS,
165 Broadway, New York, N. Y.
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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REPLY BRIEF FOR PETITIONER.

At the outset, the Custodian's brief misstates the issue before this Court. It says that the first question presented is (Br. 2):

> "1. Whether findings that enemies had substantial ownership in and complete control of Petitioner are supported by the evidence."

We do not believe that this Court granted certiorari in order to review the weight and sufficiency of evidence and therefore have raised no issue here attacking the findings of fact. The only question before this Court is whether the conclusions of law with respect to enemy taint made by the courts below on the basis of findings are correct.

The reason the Custodian attempts to distort the issue here into one of fact rather than one of law is that he is unwilling to accept the conclusions of law either of the District Court or of the Court of Appeals. Both of these opinions held that the mere existence of a right to receive dividends, secured by escrow of corporate stock in neutral hands, when held by an enemy justified the confiscation of the entire corporate property of the Petitioner.

The Custodian does not even discuss the principles of an enemy taint adopted by the courts below as a basis of their decisions. The entire defense rests on repeated assertions in his brief, which have no foundation in the findings, that the enemy Wilhelm von Opel, actually controlled and managed Petitioner corporation during the war. Since these assertions are contrary to the findings, the Government is forced to go at length into the record and pick up odds and ends of testimony with which it tries to stretch the findings so as to establish actual wartime enemy control of Petitioner.

If, therefore, we show that the courts below did not find, and that the evidence does not establish, wartime control or ownership of the Petitioner by the enemy, Wilhelm von Opel, we will have met the only argument on which the Government now relies as a defense to Petitioner's claim.

I.

The Courts Below Did Not Find, and the Evidence Does Not Establish, Wartime Control or Ownership of Petitioner by Wilhelm Von Opel.

The Court of Appeals in its opinion (R. 2325-7) and subsequent memorandum (R. 2332-4) does not even mention any enemy control of Petitioner. It rests its decision not on enemy control but solely on the ground that the usufructuary interest "including the right to the income from the shares" (R. 2326) of Petitioner constituted, "the ownership of the right to the dividends on the stock of domestic corporations" (R. 2327) owned by Petitioner and thus "in-

volves the ownership by enemy nationals of the economic benefits of American business." (R. 2327.) The District Court was affirmed on this "foregoing ground" without considering "other matters deemed by that court to support its conclusion." (R. 2327.)

The District Court's Opinion and the Custodian's Position.—It appears clearly from the District Court's opinion that the Custodian's position at the end of the trial was not based on any sort of reliance upon control of the Petitioner by the enemy during the war. After the evidence was in, the District Court in its opinion outlined the claims of the Custodian as follows:

1. That the gift agreement was void as a matter of German law.

2. That it was a sham transaction and not *bona fide.*

3. That at the very least Wilhelm and Marta von Opel had a "substantial part ownership in the securities" (R. 44) either by way of a right *in rem* or *in personam* by contract.

4. That Petitioner was an enemy because it did business in enemy territory through Transdanubia Bauxit.

5. Finally, that Fritz von Opel himself, although concededly a Liechtenstein national, was also a German national and therefore an enemy.

With respect to these contentions, the District Court held that the gift agreement was valid but that there was established a substantial enemy interest in the Petitioner's shares, i.e., a usufruct *in rem.* The District Court relied on its findings of Frankenberg's agency for Wilhelm von Opel solely for the purpose of proving compliance with the admitted requirement of German law that a usufructuary, personally or through an agent, must obtain and maintain copossession of the corporate shares subject to the usufruct. Without such copossession, the enemy would have had a mere contract right to receive dividends and not a right *in rem* in the shares. The opinion contains no fur-

ther reference to Frankenberg's agency and no suggestion that that agency continued for management purposes or control at any time during the war. It merely states that the Opel parents continued to hold and own their usufructuary interest until the assets were vested in 1942. This reference to the transaction whereby the usufruct *in rem* was created is the only reference to the Frankenberg agency in the eleven pages of the opinion. (R. 41-51.)

It was on the basis not of control but of the mere existence of a usufructuary interest that the District Court decided the case.

The District Court's Findings.—There is no finding of control during the war for management purposes. The finding on the subject, taken in connection with the Court's opinion and explanation of the finding shows that the Court did not consider that any such control existed or that it was an issue in the case. The finding is as follows (Finding 40, R. 58):

> "Thereafter Hans Frankenberg continued to be at all times and still is managing director of Uebersee Finanz-Korporation, and there is abundant evidence establishing that *up to and including 1940* he exercised control over the major policies of the corporation. From 1932 until the date of vesting, Dr. Eugene Meier was President and chief officer of plaintiff corporation. Dr. Meier testified that *in the year 1940 plaintiff corporation was without connection with Fritz von Opel or with Hans Frankenberg and that it became necessary for Dr. Meier to have a direct hand in the management of the affairs of the corporation.* The Court is not able to find from this testimony the extent to which, if any, Dr. Meier, after 1940, participated in the management of the corporation. The record is bare of evidence that after 1940 Frankenberg exercised control over plaintiff, but the record is also bare of any evidence of a termination of such control. From all of the evidence, including the evidence establishing that Frankenberg did exercise control during the years 1932 to 1940 inclusive, and establishing motive and intent for such exercise of control, and in the absence of any evidence that Frankenberg ceased to exercise such con-

trol, the Court draws the inference and finds as a fact that Frankenberg continued to exercise control over plaintiff corporation until the date of vesting." (Italics supplied.)

It is clear from this finding with respect to control of Petitioner:

1. That until some time in 1940 Hans Frankenberg exercised control over Petitioner.

2. That in the year 1940 Frankenberg severed all connection with Petitioner, and it became necessary for Dr. Meier, its President and chief officer, to manage its affairs.

3. That there is no evidence in the record that after 1940 Frankenberg exercised any control whatever over Petitioner.

The apparent inconsistency in the finding between the Court's recital of Dr. Meier's testimony that Frankenberg had severed all connection with Petitioner in 1940 and the stated "inference" that he continued in control after 1940 is explained in a colloquy between counsel and the District Court after the findings were drafted.[1] In that colloquy the Court made it clear that in indulging in a presumption or inference that Frankenberg's control had not terminated he was not speaking of management control but only of that copossession of Petitioner's shares necessary to maintain the integrity of Wilhelm von Opel's usufructuary right (R. 1782-3).

> "The Court: There are two forms of control that I am talking about. There are two forms. One of them exists by virtue of this usufructuary interest. That is number one. Now, that did not end, in my judgment.

[1] The same colloquy also explains the inconsistency between the detailed findings of fact in Finding 40 (R. 58) and the general statement in Finding 41 (R. 59) which reads as follows:

> "Hans Frankenberg acted at all relevant times as managing director of Uebersee Finanz Korporation as agent for Wilhelm von Opel."

This general finding simply refers to the continued existence of the copossession necessary for the existence of the usufruct.

"I might grant that you are right on this other kind of control, by virtue of what the Supreme Court said, namely, that Frankenberg was over here bossing and telling them what to do. As you say, that might violate the Trading with the Enemy Act. I do not know whether it does or not. Let us say it does, though. I might say that if it violated the Trading with the Enemy Act—or, as the Supreme Court says, an agency—the boss over here—between a person not a resident of Germany and one who is a resident and a citizen of Germany would be a rational deduction—that is true. I mean to say where an agency of another one over here, an American with an agency in Germany, would end at the outbreak of war, that is not going to break down his control by virtue of this usufructuary interest.

"You may be right, and I do not know whether you are right. You may be right, *but I am inclined to think that, so far as bossing the company is concerned, I am not entitled to presume that after the outbreak of war; but on that usufructuary interest, I simply do not think that the declaration of war by the United States with Germany would break down Wilhelm's—*

"Mr. Gallagher: That is a different point that I won't labor with you.

"The Court: That is right, but that very point would constitute the enemy taint and would constitute the right in rem that I am talking about in this conclusion of law. Do you see what I mean?

"Mr. Gallagher: I know, and I am not trying to dissuade you, and I know you have made up your mind on that.

"The Court: That is the heart of my decision, and I cannot believe it is wrong." (Italics supplied)

The Court also stated (R. 1779):

"The Court: I do not care whether he was an agent after the war or not. My point is the usufructuary interest had been set up and it existed as of the time of the war and that the breaking out of the war between the two sovereigns would not kill this man's rights, according to the laws of Germany, which we now respect."

The Court further stated (R. 1787):

> "The Court: For that reason that the usufruct in my judgment, did exist, even though we concede that the outbreak of war stopped his agency."

This Finding 40 alone, as explained by the colloquy, is a complete refutation of the entire case of actual control argued by the Custodian. It is therefore unnecessary to consider the evidence. We do so only to make our reply to the Custodian's brief complete.

The Evidence.—Not only is it true that the Courts below did not base their decisions on any finding of actual control, it is also true that under the uncontradicted evidence no such finding of actual control could have been made. It is the uncontradicted testimony of Dr. Meier, President of Petitioner, that after Frankenberg left Switzerland in 1940, it was Meier, not Frankenburg, who managed Petitioner's corporate affairs (R. 1486). Moreover, Frankenberg in 1940 left Switzerland permanently, not temporarily, and it is not to be presumed in the absence of contrary evidence which the District Court found lacking (R. 58), that he continued to manage the affairs of Petitioner, a Swiss corporation domiciled in Liestel. He obtained permanent residence in the United States, filed a declaration of intention to become a United States citizen, and took the statutory oath (8 U.S.C. 731) preparatory to his subsequent naturalization. As one of several directors of Petitioner, he had limited authority to act for it and could act and sign for Petitioner only jointly with another director (R. 1461, 2049). Furthermore, the evidence is clear that the Harvard and Spur companies, before and after vesting Petitioner's shares in them, were managed and operated by their own boards of directors, American citizens, with a free hand and not by Wilhelm von Opel, through Frankenberg or otherwise (R. 1197, 2026-8); Report of the Office of Alien Property for 1945, p. 89. It has never been and could not be suggested that the American management of these companies was in any way dominated and controlled by enemies.

The straw on which the Government attempts to rely is that the control by Frankenberg must be presumed to have continued after the war commenced because of the finding that he controlled in 1940. As we have shown by the colloquy explaining the Court's findings, no such inference or presumption was indulged by the District Court with respect to management control as opposed to copossession of Petitioner's shares under the usufructuary agreement. But if the Court had indulged in such a presumption of the continuance of management control, it would have been not only contrary to evidence but erroneous as a matter of law.

It would have been contrary to the evidence because the record shows and the Court found that Dr. Meier, a neutral, had testified that Frankenberg's control had terminated in 1940 over a year before the war, that he had lost connection with the company; and that Dr. Meier had taken over the control. If an inference or presumption of continued control in 1942 is to be made, it can only be the control of the last person found to be in control, namely, Dr. Meier. It is erroneous as a matter of law to infer or presume that a prior control of Frankenberg in some unexplained manner revived and replaced Dr. Meier's control. The only available explanation is that given by the District Court to the effect that he presumed Frankenberg's control of Petitioner's shares by copossession continued. It was never suggested that Meier replaced Frankenberg for this purpose in 1940.

The Custodian (Br. 41) attempts to infer some sort of control in the following statement:

> "Wilhelm was in no way barred from communicating with petitioner in Switzerland and petitioner, in turn, was free at all times to communicate with the United States."

The Government is not entirely frank here because Dr. Meier, who was in control at the outbreak of the war testified that he never met or had any communication at any time with Wilhelm von Opel (R. 1462). Furthermore the

companies were managed by American directors whose loyalty is not questioned.

But even without the testimony that Frankenberg abandoned control in 1940 when he came to America, no presumption or inference of his continued control during the war could be drawn as a matter of law from his control prior to the war. Certainly it cannot be presumed that Frankenberg, a permanent resident of the United States and an applicant for American citizenship, was committing the crime of trading with the enemy. The legally correct presumption is that under such circumstances any agency of Frankenberg's, executory in nature, ceased when the war commenced. *Sutherland* v. *Mayer*, 271 U. S. 272, 288, 297; *Williams* v. *Paine*, 169 U. S. 55, 73, affirming 7 App. D. C. 116; *Insurance Co.* v. *Davis*, 95 U. S. 425, 429-430.

Evidence Cited by Custodian.—It is probably irrelevant to comment upon evidence cited by the Custodian, the sole purpose of which is apparently to create an unfavorable impression of Fritz and Wilhelm von Opel. Nevertheless, for the sake of completeness, we will refer to it briefly.

A great point is made of the fact that one of the purposes of the gift to Fritz was to get money out of Germany and another was to use that money for his support away from Germany. This does not have the defogatory implication which the Government suggests. Quite the contrary, it shows that Fritz and Wilhelm von Opel were attempting to deprive the German Reich of funds rather than to build up enemy assets abroad. This removal of funds was so contrary to Government policy that Wilhelm von Opel was fined 3,500,000 Reichsmarks for the transaction (R. 448).

Another typical distortion of the facts is the statement that Wilhelm von Opel (a prominent manufacturer) was a prominent Nazi party member (Br. 6). The record shows that he joined the Nazi party upon orders from General Motors Corporation (R. 141), which he represented on the board of directors of Adam Opel A.G. and no doubt to protect the valuable asset of the Opel name in Germany

which General Motors had purchased (R. 400). There is no evidence whatever that he was a prominent party member and, as a matter of fact, he was not.

In its effort to establish actual enemy management and control of Petitioner and its American assets at the time the United States entered the war on December 8, 1941, and at the time the assets were vested beginning on June 4, 1942, the Custodian makes repeated reference to isolated bits of oral testimony culled from the long record and coming from strongly biased witnesses concerning conversations allegedly occurring many years before 1941 and 1942. For example, in an effort to give the erroneous impression that the Opel parents exercised their usufruct the Custodian at three places in his brief (pp. 16, 43, 53) asserts that Petitioner's assets were sold to pay a fine imposed by the Nazi German government in 1934 on Wilhelm von Opel. These assertions flatly contradict the trial court's specific findings and misstate the record. The District Court found (Fdg. 53, R. 61) that "neither Wilhelm nor Marta von Opel ever demanded or received any income of any nature from the usufruct". It was stipulattd (R. 448) that a fine was imposed on Wilhelm von Opel but it was not stipulated, claimed, proved or found that any income from the usufruct was sought or obtained to pay the fine as the Custodian asserts.

The Custodian also attempts to show management control of Petitioner and the Harvard and Spur companies in 1941 and 1942 by arguing that four years before the war in 1937 an officer of these companies, one Hoffacker, employed by Fritz von Opel, not Wilhelm von Opel, was discharged after Wilhelm von Opel in Germany discovered some allegedly adverse information about Hoffacker who formerly resided in Germany. The Custodian ignores the fact that it was Fritz, and not Wilhelm, who employed Hoffacker, and also ignores the fact that Hoffacker's connection with the companies was severed after he had a business disagreement with Fritz von Opel (R. 1996, 2020, and 1235). The fact that the alleged adverse information about

Hoffacker came first to the attention of Wilhelm von Opel, quite naturally because Wilhelm von Opel was in Germany, falls far short of establishing that Wilhelm von Opel and not Fritz von Opel discharged Hoffacker and fails wholly to prove management and control of Petitioner by Wilhelm von Opel.

Control and management of Petitioner in 1941 and 1942 by Wilhelm von Opel is not proved by testimony of John Houghland, for example, to the effect that Fritz von Opel in 1937 and 1939 made remarks indicating the interest of Wilhelm von Opel in the operation of properties which were the proceeds of his gift to his son. Even if true[2] this trivial remark at the most indicates that Fritz von Opel was interested in having his business associates meet his father and in having his father aware of the manner in which the substantial gift was being administered.

Similarly, Wilhelm von Opel's control of Petitioner in 1941 and 1942 is not proved by such testimony as that of Rudolf Deku concerning a remark attributed to Wilhelm von Opel at a dinner party many years earlier to the effect that it was worth a German fine, imposed in 1934, "to have his assets outside of the German locked safe" (R. 569; Custodian's Br. 43).[3] It was argued that the assets referred to was the gift (R. 576). Even if such a remark was made, and it was denied by Dr. Gros, another member of the dinner party (R. 1014), it is clear from the record that the court did not give weight to this testimony. It was

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[2] Houghland, a biased witness hostile to Fritz von Opel, admitted his desire to get control of the Spur Company away from Fritz von Opel and even admitted his willingness to do everything to get Fritz von Opel deported (R. 1209-10). In fact Houghland attempted unlawfully to dilute Petitioner's equity in the Spur Company by issuance of additional unauthorized stock and was prevented from doing so only under threat of criminal proceedings by the Alien Property Custodian (R. 945-946; 1183-1184).

[3] This witness had been associated in a private banking business in Berlin with his brother, Erich Deku, who defrauded Wilhelm von Opel of millions of marks and, through the efforts of Fritz von Opel, was brought to justice and given a long prison sentence (R. 573). The witness' bias was evident.

introduced for the sole purpose of proving the gift was a sham. The court disregarded it and held the gift was valid. In so finding the court must have relied upon the testimony of Dr. Gros who was present at this party and categorically denied that such statement was ever made (R. 1014).

The Custodian refers (Br. 36) to the transcript of the record on appeal in the "Gold case" which the Custodian introduced into evidence not to prove the German law on the rights of a usufructuary but in support of his contention that the gift was a sham (R. 1481). The District Court rejected this contention but now the Custodian attempts to use Fritz von Opel's affidavit in the "Gold case" as evidence of German law of a usufructuary's rights. In effect this is an attack on the findings which set forth the rights of a usufructuary. Moreover, it is an erroneous use of a conclusion of law contained in a memorandum of law (R. 2082) prepared by Petitioner's counsel in the "Gold case" and then also included in a long affidavit of factual matters (R. 1998-2018) prepared by counsel for Fritz von Opel who is not an attorney.[4] The affidavit has no relevance here to

[4] It is noteworthy that the "Gold case" affidavit of Dr. Wronker-Flatow (R. 1986-90), the German attorney who prepared the gift agreement, does not state that Fritz von Opel, legal owner of the Petitioner's shares, had mere "naked title" but sets forth the provisions of the German Civil Code disclosing the owner's substantial interests in shares subject to a usufruct. Apparently influenced by a Roman law precedent that in a usufruct by legacy the heir had "bare ownership" (*nudum proprietatum*), rather than by the German law expert's affidavit, the reference to "naked title" was included in the legal memorandum and Fritz von Opel's affidavit. The only purpose of the memorandum (submitted in support of Petitioner's application for a gold export license) on this point was to reply to the Government's contention that Petitioner's corporate entity, as a foreign corporation not present in the United States or subject to the Treasury's gold regulations, should be ignored and the gold treated as the property of Fritz von Opel who was present in the United States. The case was decided on the entirely different ground that the regulations applied to all gold in the United States without regard to the presence of the owner. *Uebersee Finanz-Korporation* v. *Rosen*, 83 F. 2d. 225 (C. A. 2) cert. denied 298 U. S. 679.

change the findings which, on the basis of the expert testimony on German law, determine the rights of the legal owner and the usufructuary in Petitioner's shares.

II.

The Usufruct Alone, Without Wartime Enemy Management Control of Petitioner, is Not Enemy Taint.

The sole issue in the case (an issue which the Government does not argue) is whether the ownership of the usufruct, standing by itself in the absence of enemy management control, is enemy taint. The enemy right to part of the dividends on Petitioner's shares for life is certainly not ownership of those shares themselves. Therefore Petitioner is not tainted as a neutral corporation might be if actually owned by an enemy. Section 1054[5] of the German Civil Code expressly recognizes that a usufruct is not ownership but rather is a usufructuary right in property owned by another.[6] A usufruct, unlike more substantial rights usually associated with ownership, is so limited and personal that it cannot be transferred by deed or will.[7] The

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[5] Section 1054 (Wang translation) provides: If the usufruct violates the rights of the owner to a serious extent, and if he continues the injury in spite of a warning by the owner, the latter may apply for an injunction.

[6] Similarly in Roman and American law it is recognized that a usufruct is not ownership but merely a right in property owned by others (R. 371, 1296-7). Justinian's Institutes, (Lib. II Tit. IV). A usufruct may be granted without surrendering ownership, Radin, *Handbook of Roman Law* (1927), p. 338; Heubner, *History of German Private Law* (1918) pp. 349-51; *Restatement of the Law of Property*, Sec. 10; *Wright* v. *Central of Georgia Ry.*, 236 U. S. 675, 680-81; *State* v. *Davidson*, 198 Ga. 27, 31 S. E. (2d) 225; *Canal & Akron Hydraulic Co.* v. *Fontaine*, 72 Ohio App. 93, 60 N. E. (2d) 225; *Modern Music Shop* v. *Concordia Fire Ins. Co.*, 131 Misc. 305, 226 N. Y. S. 630, 635.

[7] Article 1059 of the Civil Code (Wang translation) provides: "Usufruct is not transferable. The exercise of the usufruct may be transferred to another." The translator's annotation provides: "The transferee has, in such a case, only a jus in personam against the usufructuary."

usufructuary interest in Petitioner's shares was limited to the right to income or dividends and the trial court so found (R. 60). Even the right to demand income in this case may have been limited by the fact that the purpose of the reservation of income, support of the usufructuaries if in need in their old age, never materialized (R. 134, 1825). The usufructuaries' voice in management of the property, even if it included any voting rights, was limited to protection of the usufructuary "right to the income from the securities" (R. 60).

The Petitioner submits that its shares were directly and legally owned by the neutral, Fritz von Opel, and the usufruct was not "ownership" as ownership is understood either in general legal usage or in the decisions discussing enemy taint.

In conclusion on this point, it is submitted that the right here consists in an executory agreement in 1931 to pay dividends on stock secured in 1935 (R. 57-58) by escrow of the shares. It was made solely for a business purpose. It was never intended to be and never was used to build up enemy assets abroad. The sole and limited control which the enemy might have exercised would have been the degree of control available to a usufructuary of shares under German law who was found by the Court to have symbolic co-possession of Petitioner's shares through an agent, Frankenberg, who was a resident of the United States and an applicant for citizenship long before the war. Any executory and limited agency which he might have had under the usufruct to control property on behalf of the enemy was revoked as a matter of law when war commenced. The actual control of the American companies during the war was in their American management established long before the war and so trusted by the Custodian that no changes were made after vesting. There was therefore neither an enemy legal right to control Petitioner and its American companies nor a possibility of exercising enemy control.

III.

Neither Fritz Von Opel's Ownership of Petitioner's Shares Nor Petitioner's Ownership of Shares of Transdanubia Bauxit Are Evidence of Enemy Taint of Petitioner.

The Custodian's contention that the circumstances of the acquisition of Liechtenstein citizenship by Fritz von Opel transmits an enemy taint to Petitioner through Petitioner's shares owned by Fritz von Opel is answered completely by the finding that he did lawfully and validly become a naturalized citizen of Liechtenstein more than two years before the United States was at war. (Fdg. 7, R. 52-53). His Liechtenstein citizenship was conceded, and it was conceded that his neutral citizenship was not open to collateral attack (R. 48).

The Custodian states (Br. p. 57) that "the court found that *to the extent* Fritz carried on activities on behalf of petitioner, he did so under the guidance and control of his father, Wilhelm von Opel. (Fdg. 45, R. 59.) "This statement takes unwarranted liberty with Finding 45 which is that the activities of Fritz "*to a large degree* were carried on with the guidance and direction of Wilhelm von Opel, or his agent, Hans Frankenberg." (Italics supplied.) It also ignores the fact that such guidance ceased more than a year before the war. In fact, there was evidence that Fritz acted independently without advice from Wilhelm or Frankenberg on corporate matters including, for example, the employment of Hoffacker to assist him in the management of Petitioner's investments in shares of the Harvard and Spur companies. Fritz exercised his own judgment in the important transaction whereby all of the 600 Opel shares were sold instead of modifying the option and retaining 300 shares (R. 668-70). It was after this transaction was completed by Fritz that Wilhelm indicated his approval of it (R. 2229).

Moreover, the transactions which the Custodian relies upon (Br. p. 58) happened long prior to the war. If at that

time Fritz was guided by his banker Frankenberg and by his father who made him this substantial gift, both older men presumably with longer business experience, this fact cannot transmute Fritz, a neutral citizen, into an enemy and thus constitute Petitioner an enemy because of Fritz' ownership of its shares. On the findings, which control here, Fritz was not "as much his father's agent as was Frankenberg" as the Custodian erroneously asserts (Br. p. 57).

In the absence of a direct finding that Fritz as Petitioner's stockholder acted at all relevant times as agent of Wilhelm, the Custodian cannot here substitute random remarks attributed to Fritz by financially interested and hostile witnesses, which were denied by Fritz (R. 1567, 1573), and which were not relied on by the District Court in its findings. In this respect again the Custodian has stretched the record beyond plausible or tolerable limits.

We suggest, however, that it is not necessary for this Court to go beyond the findings which were made and the opinions of the courts below and to laboriously check the accuracy of our references of the record. It is sufficient to apply to the findings made the correct rule of law.

The Custodian refers to "Petitioner's doing of business in Hungary" (R. 21, 58), but the District Court refused to make such a finding. The Court did find that in the Spring of 1941, long before war between the United States and Hungary commenced on December 13, 1941, Fritz von Opel refused requests from Transdanubia for additional funds to continue mining operations and suggested that the mines be sold or leased (Finding 31, R. 56-57). Neither Petitioner nor Fritz received any income from Transdanubia at any time (Finding 31, R. 57).

Section 2 of the Act includes within the definition of "enemy" a foreign corporation doing business in enemy territory. It is clear as a matter of fact and as a matter of law that Petitioner did not do business in enemy territory (Petitioner's Brief, pp. 31-32). The statutory definition of

enemies cannot be expanded and circumvented, as the Custodian attempts to do, to mean that mere ownership of stock in an enemy corporation by a neutral corporation makes it an enemy. Certainly it would not be contended that an American corporation was made an enemy by taint because of ownership of stock in Hungarian or other enemy corporations. Similarly, a neutral Swiss corporation, entitled to the protection of the Fifth Amendment and equal treatment with an American corporation in this respect, cannot be condemned as an enemy by this indirect method where it is not an enemy under the statutory definition.

IV.

Petitioner's Claim for the Return of the Non-Enemy Interest in Its American Securities is Valid.

The Government argues that it may confiscate the entire vested property of Petitioner because its stockholder, Fritz von Opel, many years before the war pledged his certificates of Petitioner's stock to secure an agreement to pay his enemy parents 80% of the dividends for their lives.

We have contended first that the pledge of this neutral Swiss corporation's stock does not create an enemy interest in the American assets of the said corporation. As an alternative, we contend that if it is proper to pierce the Petitioner's corporate veil, as the Court of Appeals did, on the ground that Petitioner is a personal holding company of investments, the only possible result is to create in Wilhelm, the enemy, an interest in the American securities equivalent to his interest in the Swiss stock. If that is the enemy's interest, that is the only thing which the Custodian can confiscate. Certainly Wilhelm's right cannot be increased by ignoring the difference between Petitioner's assets and shares of Petitioner's stock.

This enemy usufructuary interest is not a proportionate interest in the Petitioner's stock any more than a mortgage is a proportionate interest in real estate or than a re-

mainder is a proportionate interest in property because it follows a life estate. To assert, as the Custodian does here, that the non-enemy interest of Petitioner in its assets can be confiscated is like saying that where property is mortgaged to an enemy the interest of the mortgagor ought to be confiscated, or is the same as asserting that where there is a life estate in an enemy any remainder in a neutral may be confiscated. Such a conception of enemy taint involves a a shocking appropriation of the property of friendly neutrals which could be equally applied to the property of Americans in neutral countries. The Custodian's contentions obscure the issue but do not answer this argument.

The Custodian suggests that Petitioner would have him go to Switzerland and sue in the Swiss courts to compel the payment of dividends on Petitioner's shares. The answer to this contention is that if the enemy usufruct is in Petitioner's shares the Custodian can have that enemy interest liquidated under the Washington Accord (Pet. Br. 25-26) by the Swiss Government without recourse to the Swiss courts. If, on the other hand, the Petitioner's corporate veil is pierced and the usufruct is held to be an interest in the American property (as the courts below held), that interest can be enforced in the courts here. The American shares could be subjected to the usufruct by a direction from the Court that they be held in escrow to secure copossession in Petitioner, the owner, and the Custodian in place of the usufructuaries. The Custodian would have such voting rights to protect the right to dividends on the American shares as were accorded by German law.

The Custodian's argument proposes first that the Petitioner's corporate veil be ignored for the purpose of claiming an enemy usufructuary interest directly in the American shares and then that the Petitioner's corporate entity be respected for the purpose of claiming that he could not seize the usufruct in this country and therefore should be allowed to confiscate all of Petitioner's American assets including not only the usufruct for life but the remainder as well.

The Custodian also argues that the Petitioner's claim that it should recover the non-enemy interest in its American assets was not made in time. But the record shows that this claim was raised first in the District Court when that Court had indicated its belief that there was an enemy interest (R. 50-51). In passing on this claim, the District Court erroneously treated it as a claim by Fritz von Opel, rather than by Petitioner as the proper claimant for Petitioner's property in which the enemy had no interest. Since Fritz was not a plaintiff the Court held his right could not be adjudicated in this suit. But this error of the District Court in denying the Petitioner's claim does not affect the fact that the question was raised. The question was raised again in the Court of Appeals in the argument and raised the third time in a motion to clarify the opinion of the Court of Appeals. The Court of Appeals decided the question against the Petitioner not on the technicality urged by the Government but on the merits. It held that Petitioner could not get back any of the property because Wilhelm, the enemy, was the owner of the shares of Petitioner and Fritz von Opel had only a contract right to 20% of the dividends.

It is clear from the record and the Custodian concedes (apart from its attack on the loyalty of Fritz) that Petitioner owns assets in this country which are enemy owned only to the extent that they are subject to a usufructuary right in the enemy. It is equally clear that if the corporate veil is pierced the American courts may enforce that right for the Custodian. Nowhere in the Custodian's brief is there any argument justifying the confiscation of the entire property as enemy-owned other than the technicality that the claim was not made in time and the second technicality that in order to enforce the usufructuary right the Custodian would have to go to Switzerland. Neither of these technicalities have any validity. Neither were considered by the Court of Appeals.

CONCLUSION.

Petitioner's first contention is that the existence of the usufruct in the absence of wartime showing of control by the enemy does not justify the confiscation of its property. Its second contention which it advances only in the event the Court finds against it on the first, is that in no event can the Custodian confiscate, in the absence of control, anything more than the right of the enemy in this case to 80% of the dividends for their lives.

THURMAN ARNOLD,
EDWARD J. ENNIS,
Attorneys for Petitioner,
Uebersee Finanz-Korporation, A.G.

ARNOLD, FORTAS & PORTER,
Ring Building, Washington, D. C.

GALLAGHER, OSHERMAN, CONNOR & BUTLER,
Bowen Building, Washington, D. C.

EDWARD J. ENNIS,
165 Broadway, New York, N. Y.
Of Counsel.

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NO. 178

In the Supreme Court of the United States

OCTOBER TERM, 1951

UEBERSEE FINANZ-KORPORATION, A.G., *Petitioner*

v.

J. HOWARD MCGRATH, *Attorney General*, as Successor to the Alien Property Custodian

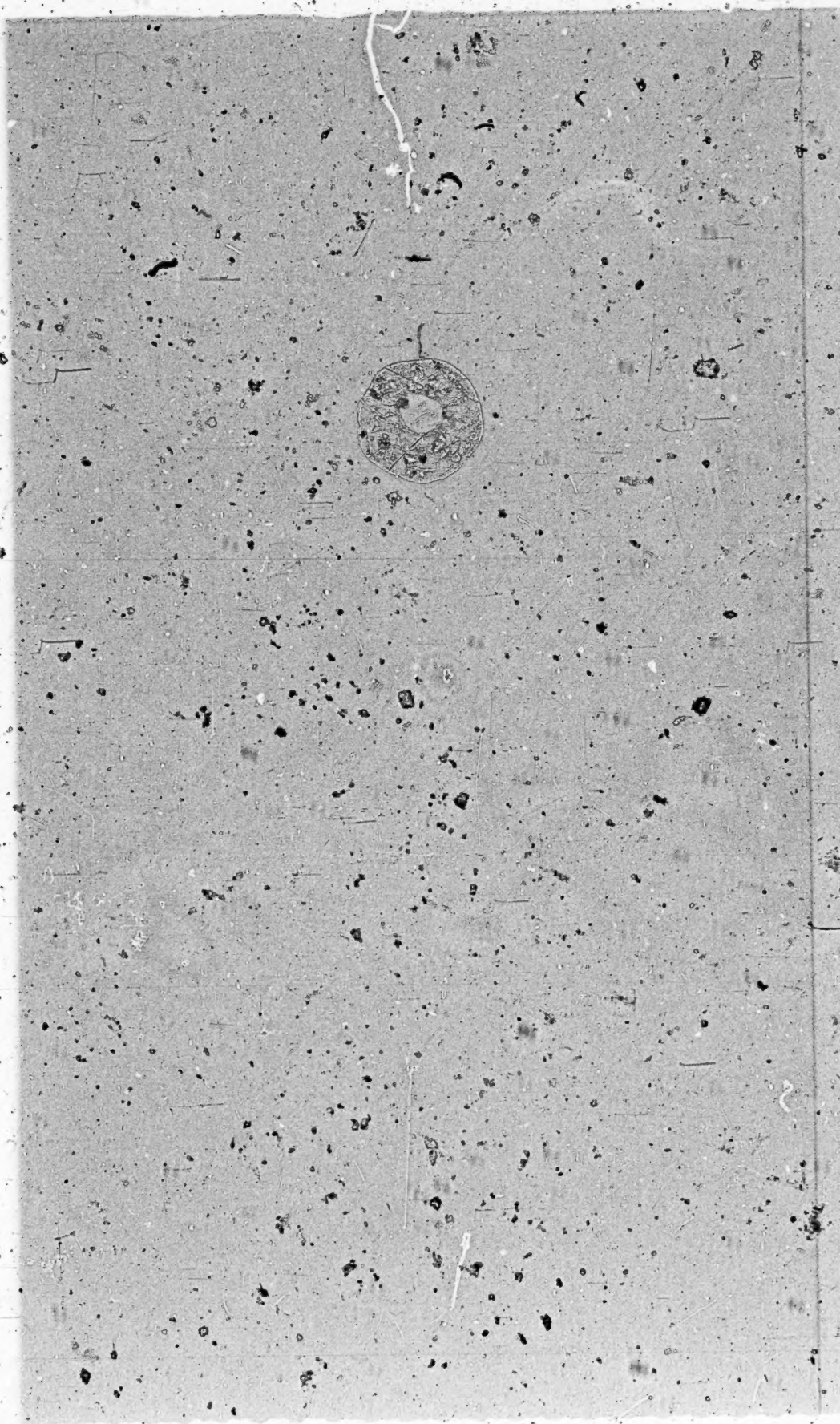
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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 41) is reported at 82 F. Supp. 602. The opinion of the Court of Appeals (R. 2326), supplemented by a "Memorandum on Appellant's Motion for Clarification of the Opinion of the Court" (R. 2333), has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals (R. 2328) was entered on February 8, 1951. By order of May 8, 1951 (R. 2337), the time for filing the petition for a writ of certiorari was extended to July 8, 1951. The petition for a writ of certiorari was filed July 7, 1951. The judgment of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the holding of the courts below—that petitioner, a Swiss corporation, was substantially owned by enemies and therefore ineligible to recover vested property in an action under Section 9(a) of the Trading with the Enemy Act—was supported by the evidence.

2. Whether recovery of part of the vested property, proportionate to an asserted fractional non-enemy interest in petitioner, could be awarded to petitioner in this action.

STATUTE INVOLVED

The pertinent provisions of the Trading with the Enemy Act, as amended, are set forth in the Appendix to the Petition (pp. 18-20).

STATEMENT

This is an action brought under Section 9(a) of the Trading with the Enemy Act (40 Stat. 411, as amended, 50 U.S.C. App. §§ 1-39) by petitioner, a Swiss corporation, to recover certain property

vested by the Alien Property Custodian[1] pursuant to that Act. On a motion to dismiss the complaint, this Court held that the mere fact the petitioner was incorporated in Switzerland was not a ground for dismissal but that petitioner could recover only if it established that it was free of enemy taint. *Clark v. Uebersee Finanz-Korporation, A.G.*, 332 U.S. 480. On remand, the District Court for the District of Columbia, after answer and extended trial, entered judgment for defendant on the merits. The court below affirmed, with one dissent (R. 2326-2328, 2333-2334).

The following facts were established by the evidence:—

1. At the outbreak of World War II, petitioner, a Swiss corporation, was the owner of record of majority share interests in several American corporations (Fdgs. 1, 2; R. 52). Their principal assets included a brewery, a chain of gasoline filling stations and oil producing and refining properties (R. 2, 7-8).

Petitioner had acquired the shares under somewhat unusual circumstances. Until 1929, Wilhelm

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[1] By Executive Order No. 9788, October 14, 1946, 11 F.R. 11981, the authority, rights, privileges and powers of the Alien Property Custodian were transferred to the Attorney General. The term "Custodian" will be used to indicate either official, as the context may require. The complaint was originally brought against James E. Markham, as Alien Property Custodian. Tom C. Clark, Attorney General, was later substituted, and J. Howard McGrath, the present respondent, was substituted on December 8, 1949 (R. 112).

von Opel and his brothers, citizens and residents of Germany, owned the Adam Opel works, a German concern manufacturing motor cars. Wilhelm dominated its management. (R. 1998-1999.) In 1929, General Motors Corporation acquired control of the concern but agreed with Wilhelm that he could retain 10% of the Opel stock (amounting to 600 shares—here called the Opel shares) (Fdg. 12, R. 53-54). He was also granted an option enabling him to sell the stock thus retained to General Motors at a predetermined price (R. 1803). Under the terms of the option (and of a reciprocal purchase option given General Motors) the Opel shares were placed in escrow with a New York bank (R. 1803).

In July 1931, Germany adopted regulations that required residents of Germany to secure licenses for transactions involving foreign exchange (R. 2313). Wilhelm and Marta, his wife, as such residents, were subject to the regulations. Fritz von Opel, their son, was not, because although a native-born citizen of Germany he had lived abroad since 1929 and thus had become a non-resident for purposes of the German foreign exchange laws. (Fdg. 16, R. 54.) On October 2, 1931, the scope of the new exchange rules was expanded (R. 2309) and farther expansion was in prospect (Fdg. 13, R. 54; R. 590). With this in mind (Fdg. 18, R. 54-5), Wilhelm, Marta, and Fritz, on October 5, 1931, signed a brief and informal instrument, (R. 1805,

Fdgs. 17, 18 (R. 54-55) that had been prepared with the utmost haste (R. 225-232, 239, 611). Its terms, applicable to both the Opel shares and the proceeds from their sale or exchange, were briefly these:

Fritz was given the 600 Opel shares that Wilhelm had retained under the arrangements with General Motors. Wilhelm and Marta, however, reserved the *usufruct* in the shares and their proceeds. The instrument provided as to this (R. 1806):

> The *usufruct* in the shares is not assigned to Fritz von Opel. It remains with Wilhelm and his wife * * * until the death of the survivor of them. However, 20% of all dividends and interest received will accrue to Fritz von Opel. [Italics added.]

Usufruct income not fully drawn by his parents was to be deemed an advancement to Fritz, for which he was accountable. Wilhelm insisted on the inclusion of the *usufruct* provisions and would not have signed the instrument without them (R. 160, 1987, 2000-2001). The instrument also provided that the gift was to revert to the parents if Fritz should die before them without leaving legitimate issue. Should they die before him the gift was to be treated as an advancement to Fritz which was to be taken from his share in his parents' estate (Fdg. 54, R. 61).

A "usufruct" in German law is an interest *in rem* that includes as a minimum the right to the income from the *res* (here subject to Fritz's claim to 20% of the income), a right to co-possession of the *res*, a voice in its management, a right to veto its transfer, and, in the view of some German commentators, certain voting rights where the *res*, as here, consists of shares of stock (Fdg. 52, R. 60-61).[2] The 1931 instrument did not, under German law, create an *in rem* interest because Fritz, the grantee, failed in terms to re-deliver possession of the *res* to his parents, but it did create their right to have the usufruct duly established (Fdgs. 32, 33, R. 57). It was in fact established prior to 1935 by delivery of the *res* to Dr. Frankenberg, a Swiss banker and Wilhelm von Opel's agent (Fdgs. 34-38, 42, 53, R. 57-58, 59, 61).

The written instrument did not fully reflect the understandings reached between Fritz and his parents (R. 240, 241, 2001, 2073). Thus, although the instrument indicated the contrary (R. 1806), it had been agreed that Fritz should convert the shares promptly into gold or dollars (R. 229, 234, 613-617, 2001). Accordingly, he sailed immediately for New York and there, on October 17, 1931,

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[2] In view of the intent of the parties, as disclosed by their contemporaneous and subsequent actions, that Wilhelm retain complete control over the subject of the gift and its proceeds, the trial court found it unnecessary to resolve the conflict among German commentators over the voting rights in shares held under usufruct. See *infra*, pp. 6-11, 17-21.

sold the 600 Opel shares to General Motors (Fdg. 19, R. 55). He did so not as donee but as his father's attorney-in-fact under a power given him after the gift (R. 1807). He deposited the proceeds, consisting of cash and General Motors shares, in a New York bank in Wilhelm's name; later, still acting as his father's attorney-in-fact, he transferred them to custodian accounts in his own name (R. 1861, 1863, 1862). He directed that 80% of the income be credited to a principal account and 20% to a special account of his own and that duplicate statements be sent to Wilhelm who also held a power of attorney to draw on the custodian accounts (R. 1865, 1869, 1870). Between 1931 and 1934, these funds were, with the approval of Wilhelm's agent Frankenberg, invested in properties that substantially correspond with those here in suit (*supra*, p. 3) (Fdgs. 2, 20, 21, 39, 40, 43, 46, R. 52, 55, 58, 59).

Another of the oral understandings was that Fritz would transfer the proceeds to a holding company so as to protect the several interests in the funds (R. 1987, 2001, 2008). This was also done early in 1932 when Fritz, after securing his father's approval, acquired with Dr. Frankenberg's help all the shares of petitioner and had the American assets transferred to it (Fdg. 20, R. 55, 2005-2006).

2. The purpose of these written and oral understandings among the Opels and their effect upon

the ownership and control of the funds in question were fully explained by petitioner itself in litigation with a federal instrumentality, in 1935 and 1936, which eventually reached this Court (R. 1968-2104).[3] Similar explanations were made orally and in writing to Swiss and American authorities.

In 1935, petitioner sued the Federal Reserve Bank of New York and others for the return of $1,250,000 of United States gold coins (R. 1970-1977). After petitioner had acquired the gold in 1933, the Secretary of the Treasury seized it under the Gold Acts (Acts of March 9, 1933, and June 30, 1934, 48 Stat. 1, 337). In its suit, as in its previous applications to the Treasury Department, petitioner asserted that under the 1931 instrument Wilhelm and Marta were the real and beneficial owners of this gold and that the Gold Acts did not apply to persons who, like Wilhelm and Marta, neither resided nor did business in the United States (R. 2081, 2084, 2085, 2067).

Petitioner filed, *inter alia*, supporting affidavits of Fritz (R. 1998-2018) and the German draftsman of the 1931 instrument (R. 1986-1990). Fritz declared that under the 1931 instrument he had acquired only "naked title" to petitioner's shares (R. 2090) and that he was left with a "mere legal

[3] *Uebersee Finanz-Korp.* v. *Rosen* (S.D.N.Y., 1935) affirmed, 83 F. 2d 225 (C.A. 2), certiorari denied, 298 U.S. 679.

title" and 20% of the income (R. 2001). He added that 97 of the 100 bearer shares (representing petitioner's entire capitalization) were deposited in a vault of a Swiss bank and that Dr. Frankenberg held the key as Wilhelm's agent and representative for the purpose of safeguarding his usufruct (R. 2017). Meier, petitioner's president, swore that Frankenberg conducted substantially all of its affairs (R. 1982-1983). He also told the United States Treasury Department in 1935 that members of the Opel family had a controlling interest in petitioner (R. 2234).[4] Petitioner also advised Swiss authorities that "a single group" controlled petitioner's capital stock (R. 2222).

3. The actual conduct of all participants in these arrangements conformed to the interpretation offered by petitioner to the federal courts and other authorities in 1935. From the outset, Wilhelm considered himself as being in control of the subject matter of the 1931 gift and was so considered by the others. It was he and not Fritz who had the final say about the sale to General Motors (R. 1967, 1968, 2227, 2229). When the German au-

[4] Significantly, petitioner's account book entitled "Foreign Management Accounts—Current Accounts" showed between 1932 and 1934 credits of $2,613,840.21 and from June to December 1933 credits of 2,500,000 Swiss francs, to "Consortium O" (Def. Ex. 49, R. 2220). "Consortium" means a group or syndicate (R. 845). It is apparent that "O" in "Consortium O" stood for Opel and that these entries showed the interest of the Opel family on petitioner's books.

thorities later fined him 3,500,000 Reichmarks (R. 448) because of the 1931 instrument, he observed that it was well worth that sum to have his assets "outside of the German locked safe" (R. 569). To help raise the funds that Wilhelm needed to pay this fine, petitioner had an oil lease sold by one of its American subsidiaries for about $150,000 (R. 1229, 1230). When Wilhelm became dissatisfied with Mr. Hoffacker, one of petitioner's principal agents in the United States (R. 1236), Frankenberg dismissed him (R. 1243-1244). Fritz advised officers of petitioner's American subsidiaries that he was accountable to his father (R. 1236) and that they worked for the latter (R. 1143). In 1939, Fritz informed Mr. Houghland, the president of one of the subsidiaries, that the "investors" in petitioner had decided to sell the stock of the subsidiary, a decision which Fritz deeply regretted (R. 2301). He amplified (R. 1143-1144) this cable by explaining to Mr. Houghland that his father, against Fritz' wishes, had ordered Frankenberg to sell the stock. Wilhelm apparently reversed this decision since the stock was not sold. Later, in January 1941, when the positions were reversed and Houghland suggested that, in view of the approaching war, Wilhelm might now be willing to sell the stock in the subsidiary, Fritz replied that his father would not be receptive to the idea (R. 1148).

For the most part, Wilhelm, in his management of petitioner's affairs, acted through Frankenberg,

who represented him, and who had at Wilhelm's request become petitioner's managing director (Fdg. 39, R. 58). Throughout the years and until the vesting, Frankenberg, as Wilhelm's agent, among other things, directed petitioner's major policies (Fdgs. 43, 45; R. 59). It was he who gave binding instructions regarding its investments and activities (Fdg. 43, R. 59). He also passed on important questions dealing with its subsidiaries. When he had to fill the positions formerly held by Mr. Hoffacker (see *supra* p. 10), he selected Mr. Ulrich, an old friend of his (R. 1243-1244; 1246). In all these matters his word was final. While Fritz participated from time to time in petitioner's affairs, he did so under the guidance of Wilhelm or Frankenberg (Fig. 45, R. 59); he never was an officer of petitioner; his authority depended on powers of attorney that Frankenberg issued to him (R. 1985, 2009-2010). In keeping with this status Fritz reported to Frankenberg and obtained his approval before important action was taken (R. 2014, 1242, 1137). Fritz on a number of occasions disagreed with decisions made by Frankenberg or Wilhelm but let it be known that there was nothing he could do about them (R. 1139, 1144). As the District Court pointed out, Frankenberg was the "guiding genius" (R. 1725). This guidance, however, was strictly vicarious; it was exercised on behalf of and for the benefit of Wilhelm, and so the trial judge found on the basis of "overwhelming evidence" (R. 1729, see also Fdg. 40, R. 58).

4. As has been indicated, Wilhelm and Marta von Opel were, at all relevant times, German citizens and residents. Wilhelm was a prominent and honored member of the Nazi party and various other Nazi organizations (R. 165-166). His son Fritz was, at least until November 21, 1939, a German citizen. He resided in Germany until December, 1929. Between then and 1939, he spent about 10% of his time in Germany (Fdg. 6, R. 52). He was in the United States from May 1940 until the trial.[5]

After the outbreak of World War II in Europe, Fritz applied for Liechtenstein citizenship (R. 1849-1852) and in a matter of weeks was naturalized by that country on November 21, 1939 (Fdg. 7, R. 52). In connection with his acquisition of this citizenship he paid sums totalling $10,000 to the national government and one of its communities, an amount equal to 3% of the country's annual budget (Fdg. 8, R. 53, 494). The Liechtenstein naturalization statute requires three years' residence, although this requirement may be waived "under extraordinary circumstances that ask for special consideration" (R. 1951). Fritz never resided nor was ever physically in Liechtenstein except while in transit to some other destination (Fdg. 7, R. 52-53). The statute also requires an oath of allegiance, which may be taken after citi-

[5] Between February 1942 and May 1945, he was interned by the United States Government as a potentially dangerous alien enemy (R. 394, 597).

zenship has been granted and may also be waived "under extraordinary circumstances". (Fdg. 9, R. 53, 1951). Fritz never took that oath, assertedly because he was too sick to travel, although the record shows that on the day of his naturalization he was in Budapest for the purpose of expediting production of bauxite for sale to a German aluminum producer (R. 893, see also R. 894, 1641, 2286). Significantly, Fritz advised an officer of one of petitioner's subsidiaries that he felt "obliged" to acquire a new citizenship for business reasons (R. 2294), and described his Liechtenstein passport as something he had bought for $10,000 and by which he was able to "fool the English" (R. 1146). He continued to regard himself as German and cheered the initial successes of the German armies (R. 1142, 1148, 1149, 1105, 1106). As the court below put it, he had a "continued interest in the welfare of and sympathy for Germany" (Fdg. 10, R. 53).

ARGUMENT

The sole question presented on this record is whether petitioner is eligible to recover any of the property in suit. That question turns on whether the petitioner is an enemy or is enemy-tainted within the principles stated by this Court upon its consideration of the motion to dismiss the complaint. 332 U.S. 480. After careful review of voluminous evidence, the District Court concluded that "it would be difficult * * * to find a stronger case of enemy taint" (R. 50); the majority of the Court of Appeals likewise emphasized that "this is not a

borderline case" (R. 2334). We think those courts correctly applied the legal principles laid down by this Court to the facts found by the District Court, and that the petition presents no issue calling for further review.

I.

A. Section 2 of the original Trading with the Enemy Act defined a corporation as an enemy if it was incorporated or did business in an enemy country. In 1925, this Court construed the statutory definition as exclusive and explicitly rejected the doctrine established in England by *Daimler Co.* v. *Continental Tyre & Rubber Co.*, [1916] 2 A. C. 307, that a corporation, although incorporated in non-enemy territory, was an enemy if it was owned or controlled by enemies.[6] *Behn*,

[6] The *Daimler* case established that "the character of those *who can make and unmake* * * * [the corporate] officers, *dictate their conduct* mediately or immediately * * * and call them to account" may be material in determining the corporation's enemy character. A corporation was to be deemed an enemy if its "agents or the persons in *de facto* control of its affairs, whether authorized or not, are resident in an enemy country, or, wherever resident, are adhering to the enemy or *taking instructions from or acting under the control of enemies*". [1916] 2 A. C. at 340, 345 (italics added). See also *The St. Tudno*, [1916] P. 291; *The Polzeath*, [1916] P. 241; *The Michigan*, [1916] V Ll. P. C. 421; *The Hamborn*, [1919] A.C. 993; *In re Badische Company*, [1921] 2 Ch. D. 331.

Like principles were applied in early American decisions in the field of prize law (to which the Trading with the Enemy Act is historically and constitutionally related). *Stoehr* v.

Meyer & Co. v. *Miller*, 266 U. S. 457; *cf. Hamburg-American Co.* v. *United States*, 277 U. S. 138. Under this strict territorial construction, the World War I Custodian lacked power to seize enemy property whenever an enemy had placed his American assets into a neutral corporation in exchange for all of its shares.

In order to cope with the new patterns of corporate control and economic warfare that had emerged since World War I, Congress, at the outbreak of World War II, amended Section 5(b) of the Act so as to authorize the vesting of "any property or interest of any foreign country or national thereof." First War Powers Act, 55 Stat. 838, 50 U.S.C. App. § 5(b). This Court recognized, on its consideration of the motion to dismiss the complaint, that this amendment required the reformulation of the concept of "enemy". It therefore held that Section 2 must now be regarded as "merely illustrative, not exclusionary" (332 U. S. at 488-489), and that persons or corporations affected with an "enemy taint" are now within the reach of the term "enemy". It also abandoned (at 486), as "destructive of the objectives of the 1941 amendment to § 5(b)", the doctrine of *Behn, Meyer & Co.* v. *Miller, supra*. It pointed

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Wallace, 269 Fed. 827, 840 (S. D. N. Y.), affirmed, 255 U.S. 239. See *e.g. The William Bagaley*, 5 Wall. 377, 409; *The San Jose Indiano*, Fed. Case No. 12322 (C. C. D. Mass.); *The Friendschaft*, 4 Wheat. 105, 107; *The Cheshire*, 3 Wall. 231, 233.

out that one of the evils at which the 1941 amendments were aimed was that enemies "had through numerous devices, including the corporation, acquired *indirect control or ownership* in industries in this country for the purposes of economic warfare" (pp. 484-485). It refused to assume that Congress intended the seizure and retention of property of "friendly or neutral foreign interests whose investments in our economy were *in no way infected with enemy ownership or control*" (p. 487). But it unequivocally rejected the view, adopted in the *Behn, Meyer* case, *supra*, that a plaintiff which "was *owned or controlled* by enemy interests" could recover vested property (p. 486). (Italics added throughout.) In the light of this opinion and the findings made by the trial court, we think it clear that petitioner is an enemy within the reach of Section 2 of the present Act.

B. It is not disputed that the Opel parents were enemies within the literal terms of that section. Nor is it disputed that they had a usufruct—an *in rem* property interest under German law—in all of the shares of petitioner, a Swiss holding company. As to the scope and effect of the rights thus held by the enemy parents, petitioner has taken two diametrically opposite positions. In 1935, in its "Gold" case (*supra*, pp. 7-9), it contended that Fritz von Opel had only bare legal title and that his parents had the entire beneficial interest. Now it asserts that the beneficial inter-

.est was in Fritz and seeks to dismiss the interest of the parents as "remote" and "unimportant". Thus, the question presented to the courts below and to this Court is fundamentally not one of the interpretation of this Court's prior opinion, but one of fact as to which of these two conflicting views of the rights and powers possessed by the parties to the underlying agreements is correct.[7]

C. The courts below were clearly warranted in accepting the view of the facts which petitioner had urged in 1935. There was ample evidence before them that all parties, at all relevant times, regarded the Opel parents as the owners of petitioner, and, through it, of the properties in suit. Thus, Wilhelm stated in 1934 that the effect of the 1931 agreement was to place "his [Wilhelm's] assets outside of the German locked safe" (R. 569). Fritz in 1937 told Crittenden (president of one of the American subsidiaries) that "he was entrusted with the use of a considerable amount of money by his father under what he described as a usufruct contract and, in a general way, he had the handling of the funds and accounted back to his father" (R. 1236). Fritz in 1939 invited Houghland, the president of another subsidiary, to meet

[7] In the District Court counsel for petitioner candidly admitted that it would lose this case if its assertions in the "Gold" case that the Opel parents owned the beneficial interests were true (Tr. 2677-86; Tr. will be used herein to refer to the unprinted transcript of the trial, a copy of which petitioner has filed with this Court).

Wilhelm because "after all, you work for my father" (R. 1143). Fritz in January, 1941, declined because his father would not be receptive to the idea, to consider Houghland's suggestion that petitioner sell the shares of that subsidiary (R. 1148).

Examination of the nature of the rights conferred by a usufruct, and of the conduct of the parties with respect to the petitioner and the properties here in suit, confirms this view. In the first place, it is undisputed that by virtue of the usufruct the Opel parents had the right to receive the income derived from the American enterprises (subject to Fritz's contractual right to 20% of that income). We agree with the court below that this, without more, was sufficient to preclude recovery. As that court said (R. 2327):

> This case does not involve a diluted "taint"; it involves the ownership by enemy nationals of the economic benefits of American business. This seems to us to be a more obvious objective of the vesting provisions of the statute than is the bare ownership of a sterile legal title. As between the right to the naked tree and the right to the periodical fruit, the benefit to the enemy would be more in the latter than in the former.

In addition, the Opel parents had the important rights to co-possession of the shares and to prevent any transfer of them. Finally, whatever uncer-

tainties there may have been in the German law as to the location of voting rights under the usufruct, there can be no doubt that the understanding of the parties and their consistent practice was that entire control of the enterprise remained with Wilhelm. Wilhelm's agent Frankenberg, as managing director of petitioner, was the "guiding genius" to whom all matters of importance were referred, who hired and fired officers of the American subsidiaries and determined their policies, and who had the unquestioned power to override Fritz's wishes.[8]

D. Petitioner attacks the lower court's conclusion—and, by the same token, its own pre-war position—by asserting (Pet. p. 5; see also p. 12) that "the record is clear that Wilhelm and Marta von Opel never exercised any of the rights which they had on account of the usufruct". This assertion ignores the realities of the situation.

Petitioner emphasizes, for instance, that "Wilhelm and Marta * * * did not request or receive any of the dividends" (Pet. p. 5). But this fact is

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[8] The fact that petitioner, through a wholly-owned subsidiary, did business in Hungary after the outbreak of war was properly regarded by the District Court as "an additional circumstance which of itself perhaps would not prevent recovery by plaintiff * * * but which with the other facts of the case tends to indicate enemy taint" (R. 49). The facts as to this aspect of the case are set out in the District Court's opinion (R. 49-50), and findings (Fdgs. 22-31, R. 55-57).

wholly irrelevant when seen in its context. For though it is true that it does not appear that the petitioner ever paid dividends to anyone, it is also true that there was every reason why Wilhelm would not want it to. Under the German exchange regulations, Wilhelm and Marta would have been compelled to convert any dividends received into reichmarks. Like most Germans similarly situated, they knew the truth of the saying then current in Germany that "money alone shouldn't make you happy; you should have it in Switzerland to be happy about it" (R. 228) and they acted accordingly (*ibid.*). Voluntarily to return assets of the petitioner into "the locked German safe" (R. 569) would have run counter to all that the Opel family and Frankenberg had accomplished since 1931. Indeed, Wilhelm did make use of petitioner's resources whenever he was in need of foreign exchange. Thus, $150,000.00 was raised by one of petitioner's American subordinates to help pay Wilhelm's fine to the German government (R. 1229-1230) and petitioner provided Wilhelm with funds for a trip to South America (R. 131).

The assertion that the usufruct was not exercised disregards the facts in other respects. The Opel parents exercised not merely the right to co-possession which the German Civil Code granted them explicitly; they had, in fact, exclusive possession, through Frankenberg who had been in-

stalled as petitioner's managing director at Wilhelm's request and as his representative. And, finally, it was Frankenberg who completely controlled, on his master's behalf, petitioner's policies and operations and the policies and operations of its American subsidiaries until the date of vesting.[9] Significantly, petitioner omits all reference to this aspect of the case.

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[9] Nor can petitioner argue that Frankenberg's agency and with it Wilhelm's control ceased upon the outbreak of war because Frankenberg could not thereafter lawfully act as Wilhelm's agent. The following grounds fully justify the rejection of this argument by the trial court (See Fdgs. 41, 43, R. 59):

(1) Agencies are not necessarily terminated by war and, in particular, the agent's authority to preserve his principal's property continues. *Sutherland* v. *Mayer*, 271 U.S. 272, 288, *Williams* v. *Paine*, 169 U.S. 55; see also *Fujino* v. *Clark*, 71 F. Supp. 1 (D. Haw.), affirmed, 172 F. 2d 384 (C.A. 9), certiorari denied, 337 U.S. 937; *Second Russian Insurance Co.* v. *Miller*, 297 Fed. 404 (C.A. 2), affirmed, 268 U.S. 552; *Pipe* v. *The La Salle*, 49 F. Supp. 662 (S.D.N.Y.); and *Daimler Co.* v. *Continental Tyre & Rubber Company*, *supra*, [1916] 2 A.C. 307, 326, 349.

(2) It is sufficient if this agency and control existed at the outbreak of the war. *Schrijver* v. *Sutherland*, 57 App. D. C. 214, 19 F. 2d 688, certiorari denied, 275 U.S. 546; *Société Suisse* v. *Cummings*, 69 App. D.C. 154, 99 F. 2d 387; *Sarthou* v. *Clark*, 78 F. Supp. 139 (S.D. Cal.); *Beck* v. *Clark*, 86 F. Supp. 565 (D. Conn.).

(3) Termination of Frankenberg's agency would in any event not establish that Wilhelm's control terminated. Wilhelm may have acted in person or through other agents. Indeed, the court found (Fdg. 45, R. 59) that, throughout, Fritz acted under his father's direction. The record is bare of any suggestion that, up to the date of vesting, the relationships between Fritz and Wilhelm, or between petitioner and Wilhelm, underwent any change whatever.

E. It is thus clear not only that the usufruct rights were exercised, but that the rights granted a usufruct holder under German law were considered by the parties as the very minimum to which the Opel parents were entitled. Petitioner cannot dispute that had Wilhelm and Marta von Opel owned all of the Uebersee shares outright, its American assets could properly have been vested and retained. Petitioner now in effect argues that they could escape seizure and retention of these assets by placing the same shares under a usufruct arrangement which left in them all the powers of control and substantially all the rights of beneficial ownership which they could have had as outright owners. This argument is in startling contrast to the admission by petitioner's counsel in the District Court that it would lose its case if its assertions in the "Gold" case concerning the beneficial ownership of petitioner were true.[10] In any event, such an argument would receive short shrift in other fields of the law.[11] To allow it to prevail under the Trading with the Enemy Act would sanction easy evasion of that Act. It would reduce the 1941 amendment and the prior decision of this Court in this case to a mere requirement of one additional link in the chain through which enemy ownership and control are exercised.

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[10] Tr. 2677-8. See fn. 7, *supra*, p. 17.

[11] See *e.g.*, *Hormel* v. *Helvering*, 312 U.S. 552, *Helvering* v. *Clifford*, 309 U.S. 331; *Commissioner* v. *Lamont*, 127 F. 2d 875 (C.A. 2).

F. Petitioner also suggests (Pet. p. 12) that the vested properties in suit were not useful for economic warfare. It appears to argue that under this Court's prior decision the Custodian has no authority to retain vested property, unless it can be used for that purpose. We can read no such requirement in the Court's opinion. Moreover, petitioner's suggestion misconceives the very purposes of the Trading with the Enemy Act. In the first place, most property is convertible into cash and may serve as basis for the extension of credit. For this reason, the Custodian has vested thousands of bank accounts, negotiable instruments, estates and other interests in real and personal property, both tangible and intangible. See *Annual Report, Office of Alien Property* (1949, pp. 46, 59, 67, 69). These assets have been vested because their aggregate value is substantial, and if not vested they might have enabled our enemies to mobilize considerable financial resources in this country. By that vesting our enemies were denied "the opportunity to secure advantages to themselves or to perpetrate wrongs against the United States * * * through the use of assets that happened to be in this country." *Propper* v. *Clark*, 337 U. S. 472, 481. Secondly, "the purpose of the Act was to reduce to possession all accessible enemy property, not only to cripple Germany, *but to prosecute the war*" (italics added). *Lizrodt* v. *Miller*, 17 F. 2d 533 (C. A. 2). Finally, enemy property

of every character was vested so as to make it available to satisfy the claims of American citizens.[12]

II.

Although petitioner claims the vested property in its own right and in its own name, it argues (Pet. pp. 13-16) that the courts below erroneously failed to return the "fractional" non-enemy interest represented by Fritz. We think that this claim was properly rejected for a number of reasons. We need not consider the question whether such a partial recovery could be awarded in any case, or the further question whether, on the facts of this case, Fritz von Opel had any present interest on which such a recovery could be predicated.[13]

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[12] Section 34 of the Act provides a comprehensive scheme for the payment of American creditors of the former enemy owners of vested property; Section 39, enacted as part of the War Claims Act of 1948 (62 Stat. 1246), prohibits return of vested assets to nationals of Germany and Japan. The War Claims Act earmarks these assets for the compensation of Americans who suffered at the hands of our enemies.

[13] As the court below rightly held, Fritz's claim to 20% of the dividends was a purely contractual right not rising to the dignity of a property interest in the shares (R. 2334). His bare legal title to the shares is clearly not an interest entitled to recognition under the Trading with the Enemy Act. *Stoehr v. Wallace*, 269 Fed. 827, 835 (S.D.N.Y), affirmed, 255 U.S. 239. Nor does the third interest claimed by Fritz—a remainder interest in petitioner's shares which will vest in possession if Fritz or his legitimate issue should survive both his parents—support a partial recovery. This is because the

For in any event (a) this claim was advanced too late, (b) petitioner is in no position to assert it on its stockholder's behalf, and, finally, (c) the asserted separate non-enemy interest is neither separate nor non-enemy.

A. Neither in its pleadings nor during pre-trial proceedings did petitioner indicate that it might seek recovery of Fritz's "fractional" interest. Moreover, as petitioner's counsel frankly stated (Tr. 2711), they declined throughout the trial to argue that question. Not until the close of the argument on the twenty-fourth day of the trial did petitioner's counsel indicate that a question of partial recovery was involved.[14] At that stage, however, petitioner's failure to present evidence concerning the feasibility and method of separating the respective interests and their value had left the trial judge without guidance for framing a decree in its favor. Although the court indicated its surprise over petitioner's claim to a partial recovery and repeatedly called counsel's attention to the inadequate record made in its support (Tr. 2951, 2953, 2954, 2959, 2960, 2961), peti-

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enemy character of a corporation and the extent and nature of the asserted non-enemy interests cannot be changed after the date of vesting. *Swiss National Insurance Co.* v. *Miller*, 267 U.S. 42.

[14] Similarly, petitioner did not advert to this contention in the Court of Appeals until it filed its reply brief.

tioner did not move to correct this deficiency. In these circumstances we think the trial judge acted entirely within the scope of the discretion entrusted to him in the conduct of a lengthy and complicated trial when he refused to adjudicate a claim so unseasonably and inadequately presented.

B. But even if the claim had been seasonably presented the courts below could not have sustained it in the procedural posture of this case. The sole plaintiff in this action is petitioner, a Swiss corporation, which seeks recovery of its vested assets. To succeed, petitioner must establish, under this Court's decision, that it is not an enemy, that it is free from enemy taint. Since it has failed to establish that it is eligible to recover its property under Section 9(a) of the Act, judgment was properly entered for the respondent. Plainly, no recovery can be awarded to Fritz in this action, for he is not a party plaintiff.[15] Nor do we perceive any theory on which petitioner could sue on his behalf. We know of no basis on which a corporation can sue for the benefit of its individual stockholders. See the Government Respondents' Brief in Opposition, *Kaufman* v. *Société Internationale Pour Participations Indus-*

[15] Fritz is the plaintiff in three suits now pending in the Southern District of New York and the District of Columbia. *Fritz von Opel* v. *McGrath*, Civ. 50-70; *Fritz von Opel* v. *Clark*, Civ. Action No. 1910-49; *Fritz von Opel* v. *Clark*, Civ. Action No. 1923-49.

trielles et Commerciales, S.A., No. 172, this Term, pp. 12-14. And to allow an enemy tainted corporation to secure even a partial recovery would plainly defeat the purposes of the act, for then the property recovered would enure, in part, to the benefit of the enemy interests in the corporation.

C. Finally, the "fractional" interest of Fritz is separate and non-enemy in the most superficial sense only. As the trial court put it, "the neutral aspect of ownership in the property is insignificant" (R. 50). This is not a case of enemies and non-enemies dealing at arms length with each other. Fritz was subject in a very substantial degree to the influence and control of his father. In numerous fields of the law, transactions between members of a family are treated differently from those between strangers. In tax cases, for example, ownership by a family is often regarded as equivalent to ownership by the head of the family, *e.g.*, *Helvering* v. *Horst*, 311 U. S. 112, 118; *Harrison* v. *Schaffner*, 312 U. S. 579, and arrangements between the members of the family are subject to special scrutiny. *Helvering* v. *Clifford*, 309 U. S. 331, 335; *Commissioner* v. *Tower*, 327 U. S. 280, 291. Like principles have been applied under the Trading with the Enemy Act. *Fujino* v. *Clark*, 71 F. Supp. 1 (D. Haw.), affirmed, 172 F. 2d 384 (C. A. 9), certiorari denied, 337 U. S. 937. Similarly, in considering the neutral aspects of Fritz's alleged separate interest the family relationship

between Fritz, the "non-enemy", and Wilhelm, the enemy, is most significant. This relationship imposed upon petitioner the burden of establishing convincingly that Fritz was not subject to enemy influence and control. Such a showing has not been made. On the contrary, the evidence clearly establishes that Fritz participated in the management of petitioner as his father's tool and agent. As the District Court found, his activities for petitioner were largely carried on "with the guidance and direction of Wilhelm von Opel, or his agent, Hans Frankenberg". (Fdg. 45, R. 39) Obviously, therefore, Fritz was anything but an innocent bystander. Moreover, the extraordinary circumstances under which, after the outbreak of World War II, he purchased a Liechtenstein passport, and the sentiments he expressed on the early successes of the German armies clearly indicate that his allegiance to a neutral country was one in name only. In the light of the foregoing facts, it seems fanciful to argue that this Court, in referring to "friendly or neutral foreign interests whose investments in our economy were in no way infected with enemy ownership or control" (332 U. S. at 487), was visualizing an interest of the sort here asserted.

CONCLUSION

Petitioner asserts two issues. The issue whether petitioner is an enemy turns, not on questions of law, but on the inferences to be drawn from a par-

ticular, and relatively unique, factual situation. The claim to a partial recovery was not seasonably made below, cannot be asserted by this plaintiff, and rests on erroneous assumptions of fact. Thus, neither of the issues sought to be raised by petitioner presents any question of general interest calling for further review by this Court. On neither is there any conflict with decisions of this or any other court. Accordingly, the petition should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

HAROLD I. BAYNTON,
Assistant Attorney General.

JAMES L. MORRISSON,
Special Assistant to the Attorney General.

JAMES D. HILL,
GEORGE B. SEARLS,
MYRON C. BAUM,
JOSEPH LAUFER,
Attorneys.

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No. 178

In the Supreme Court of the United States

OCTOBER TERM, 1951

UEBERSEE FINANZ-KORPORATION, A. G., PETITIONER

v.

J. HOWARD MCGRATH, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT

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BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 2326) is reported at 191 F. 2d 327. This opinion was supplemented by a "Memorandum on Appellant's Motion for Clarification of the Opinion of the Court" (R. 2333) which has not yet been reported. The opinion of the District Court (R. 41) is reported at 82 F. Supp. 602.

JURISDICTION

The judgment of the Court of Appeals (R. 2323) was entered February 8, 1951. By order

of May 8, 1951, the time for filing a petition for a writ of certiorari was extended to July 8, 1951. The petition for a writ of certiorari was filed July 7, 1951, and was granted on October 15, 1951 (R. 2336). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

The principal questions presented are:

1. Whether findings that enemies had substantial ownership in and complete control of petitioner are supported by the evidence.

2. Whether, by reason of such ownership and control, petitioner is an enemy ineligible to recover anything in this action.

STATUTE INVOLVED

The relevant portions of the Trading with the Enemy Act, as amended, are set forth in the Appendix to the Brief for Petitioner (pp. 35–43).

STATEMENT

This is an action, brought by petitioner under Section 9 (a) of the Trading With the Enemy Act, as amended (40 Stat. 411, 50 U. S. C. App. 1–40), for the recovery of certain properties vested by the Alien Property Custodian[1] pur-

[1] The functions of the Alien Property Custodian were transferred to the Attorney General by Executive Order 9788, October 14, 1946, 11 F. R. 11981. The action was brought against James E. Markham, as Alien Property Custodian. Tom C. Clark and J. Howard McGrath, as Attorneys General, were successively substituted as defendants

suant to that Act. Petitioner is a Swiss holding company. Through subsidiary corporations, it held various operating properties, principally in the United States. At various times in 1942, the Custodian vested the stock interests owned by petitioner in its American subsidiaries, and it is for those interests that petitioner sues.

The principal American properties held by petitioner, and the interests in them vested by the Custodian and here claimed, are as follows:

1. Harvard Brewing Company, a Delaware corporation, which through its wholly owned Massachusetts subsidiary of the same name operated a brewery in Massachusetts. 382,700 shares of Harvard (Delaware) out of a total of 625,000 shares were vested by the Custodian. Of these, 345,760 are claimed in this action.

2. Spur Distributing Company, a Delaware corporation, operating a chain of retail gasoline stations in Tennessee and 20 other states. 73,039 shares of Spur out of a total of 139,000 shares were vested and are here claimed.

3. Oil Production, Inc., and Oil Refineries, Inc., Louisiana corporations, owning oil producing and refining properties. Their assets eventually came into the hands of Amerlagene, Inc. (D. Ex. 68, R. 2241). All of Amerlagene's capital stock was vested and is here claimed.

(332 U. S. 480; R. 112). We shall use the term "Custodian" interchangeably to refer to the former Alien Property Custodian or the Attorney General as his successor.

4. Westminster Industrial Corporation, a New York corporation, engaged in commercial financing operations. Its entire stock was vested, and is here claimed.

In addition, petitioner owned the entire stock of Transdanubia Bauxite, A. G., a Hungarian corporation, operating bauxite mines in Hungary (Edg. 22, R. 55; Concl. 5, R. 62–63).

On a prior appeal, this Court held (*Clark* v. *Uebersee Finanz-Korporation, A. G.*, 332 U. S. 480) that a motion to dismiss the complaint, on the ground that petitioner was a foreign national, should have been denied, since on the allegations of the complaint, taken as true for purposes of the motion, petitioner was "free of all enemy taint" (332 U. S. at 482). On remand, after answer denying the allegations of the complaint relating to petitioner's asserted lack of enemy taint, and after extended trial, the district court entered judgment for respondent on the merits (R. 64). Upon appropriate findings (R. 52–62), it concluded that by reason of enemy ownership and control of petitioner and the vested properties, petitioner was barred from recovery under Sections 2 and 9 (a) of the Trading with the Enemy Act (Concl. 4, R. 62). This conclusion it found was reinforced by two subsidiary elements of enemy taint, discussed *infra*, pp. 21–26. (Concl. 5; R. 62–63.) The court said in its opinion (R. 50):

> From what has been stated, it would be difficult in my opinion to find a stronger case of enemy taint in vested property short of full ownership by an enemy than exists in this case. The neutral aspect of ownership in the property is insignificant and it seems to me the plain intent of the Trading with the Enemy Act would be defeated by ordering a return of the vested securities.

The Court of Appeals, Judge Clark dissenting, affirmed on the ground of enemy ownership and control of petitioner, without deeming it necessary to consider the subsidiary elements of taint. It stated (R. 2327):

> This case does not involve a diluted "taint"; it involves the ownership by enemy nationals of the economic benefits of American business. This seems to be a more obvious objective of the vesting provisions of the statute than is the bare ownership of a sterile legal title.

The Facts

The facts on which these conclusions rested, as found by the district court and as disclosed by the evidence,[2] may be summarized as follows:

[2] Petitioner makes the surprising assertion (Br. p. 3, n. 1) that most of the evidence in the record can be disregarded, as relevant only to a contention, which the district court rejected, that the 1931 transaction was sham. The principal issue at the trial was whether petitioner was owned or controlled by enemies; the Government's case on this had three

It is undisputed that the entire beneficial ownership and control of petitioner rested in one or more members of the von Opel family. The significant members of that family for present purposes are Wilhelm von Opel, his wife Marta, and their son, Fritz von Opel.

Wilhelm von Opel, and his wife Marta, were at all relevant times citizens and residents of Germany (Fdg. 4, R. 52) and concededly became enemies upon the outbreak of war between the United States and Germany. Wilhelm was a leading German industrialist. From 1933 on, he was a prominent member of the Nazi party, as well as other Nazi organizations (R. 165). He received a medal and a personal telegram of congratulations from Hitler on his 70th birthday in 1941 (R. 165–166).

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major branches: (a) that the 1931 "gift" was a sham, (b) that assuming the gift instrument was an effective legal transaction, the interests and powers retained by the Opel parents in petitioner, and exercised after October 5, 1931, constituted such ownership and control as to make petitioner an enemy, and (c) that these retained interests and powers were not relinquished by the Opel parents after October 5, 1931. (See R. 42–44.) The district court decided (b) and (c) in the Government's favor. Most of the evidence received at the trial was relevant to all of those issues.

While we can understand why petitioner would prefer to brush aside most of the evidence, and most of the findings, we perceive no basis on which that could be done. On the contrary, the decision of the district court, affirmed by the court of appeals, that petitioner was an enemy because owned and controlled by enemies, necessarily rested on all the evidence as to the understandings and actions of the members of the von Opel family, and the officers of petitioner and its subsidiaries, between 1929 and the date of vesting.

This son, Fritz, was born in Germany in 1899 and resided there until December 1929, achieving some fame as a balloonist and racer (Fdg. 5, R. 52; R. 479). After December 1929, he traveled extensively in Europe and the Western Hemisphere, spending about 10% of his time in Germany (Fdg. 6, R. 52). He established a residence in Switzerland in 1934 (Fdg. 6, R. 52), but did not have sufficient continuous residence in Switzerland to be eligible for Swiss naturalization (Pl. Ex. 49, R. 1849). On November 21, 1939—almost three months after the outbreak of the war in Europe—Fritz von Opel became a naturalized citizen of Liechtenstein, under unusual circumstances which we shall discuss *infra*, pp. 23–25. He came to the United States in May 1940, as a visitor, and remained here during the war. From February 1942 to May 1945 he was interned pursuant to the Alien Enemy Act (40 Stat. 531, 50 U. S. C. 21) as a potentially dangerous alien enemy (R. 394, 597).

Acquisition of petitioner by the von Opel family.—Petitioner, and the properties owned by it, were acquired by the von Opel family with the proceeds of a 10% stock interest in the Adam Opel Works, one of the largest German motor car manufacturing firms (Fdgs. 12, 16; R. 53–54, 59). That firm had been founded by Wilhelm von Opel's father. Until 1929 it was owned by Wilhelm and his brothers. Wilhelm was the dominant figure in its management (R. 116–117.)

In 1929, General Motors Corporation purchased 80% of the stock of the Opel Works. Wilhelm retained a 10% interest, which was subject to a "put-and-call" agreement giving General Motors an option to buy and Wilhelm von Opel an option to sell at stated prices on or after April 11, 1929 (Fdg. 12, R. 53–54; Pl. Ex. 3, R. 1803).

In July 1931, Germany adopted laws which required residents of Germany to secure licenses for any transactions involving foreign exchange or foreign assets (Def. Exs. 31, 114, R. 2137–2142, 2313–2318). Wilhelm and Marta von Opel, as residents of Germany, were subject to these laws, but Fritz von Opel was not, because, although a German citizen, he had lived outside the country after 1929 (Fdg. 16, R. 54). These laws were progressively strengthened during 1931 (Fdg. 13, R. 54). Wilhelm and Fritz von Opel were very concerned about the possibility of German financial collapse and had discussed means of avoiding the danger (Fdg. 14, R. 54).

On October 2, 1931, there were issued new decrees drastically tightening the application of these foreign exchange laws (Def. Ex. 113, R. 2309). Also on or about October 2, 1931, Fritz came from Belgium to his father's house in Germany (R. 405, 406). On October 5, 1931, an instrument, hastily drawn in an hour or two (R. 239, 611), was executed, purportedly giving to Fritz the von Opel shares then held by his parents (Pl. Ex. 5, R. 1806). The attorney who drafted the in-

strument testified that its primary object was to place the shares and their proceeds outside the scope of the German foreign exchange legislation (R. 227). As he further testified, the saying was then current in Germany that "money alone shouldn't make you happy; you should have it in Switzerland to be happy about it" (R. 228).

The instrument of October 5, 1931, provided, among other things (R. 1806):

> The usufruct in the shares is not assigned to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the death of the survivor of them. However, 20 percent of all dividends and interest received will accrue to Fritz von Opel.

The instrument further provided that if Fritz predeceased his parents without leaving legitimate issue, the gift was void and was to revert to the parents. If the parents died before Fritz, the gift was to be considered an advancement to be deducted from his share in his parents' estate. Usufruct income not drawn by the parents was also to be accounted for by Fritz as an advancement.

In the light of the foregoing evidence, the district court found (Fdg. 18, R. 54–55) that the primary object of the 1931 transaction was to obtain payment upon sale of the Opel shares in the form of gold or American currency instead of German marks, while a second purpose was to

make financial provision for Fritz von Opel.[5] The court further found (*ibid.*) that the 1931 gift was not intended to be a sham transaction, but was intended to be a gift of part interest of the owners, and that legal title to the 600 Opel shares passed to Fritz von Opel by the agreement.[6]

To effectuate the primary object of the agreement, Fritz sailed on October 7, 1931, for New York and on October 17, pursuant to the "put and call" agreement, sold the shares to General Motors (R. 650–651; Pl. Ex. 6, R. 1807) for approximately $3,500,000, some two-thirds of which was paid in cash and the balance in General Motors stock (Pl. Exs. 65, 68, R. 1861, 1863). Between 1931 and 1934, these funds were invested in properties which substantially correspond with those vested by the Custodian. Early in 1932, Fritz, with his father's specific approval, purchased all of the shares of petitioner and had the

[5] This purpose was accomplished by the contractual stipulation that Fritz was to receive 20 percent of the income from the property. In fact, the record indicates that once petitioner was established Fritz received money by way of salary or expenses from petitioner rather than by way of dividends (see Pl. Ex. 75, R. 1873–1874).

[6] The remaining 10 percent interest in the Opel works had been retained by Wilhelm's brother Fritz Opel (the uncle of the Fritz von Opel here involved). These shares were purportedly sold by the senior Fritz to his nephew Hans, a resident of Switzerland, in October 1931, a transaction which was later reversed as in violation of German foreign exchange laws (R. 1590–92).

American investments and funds transferred to it (Def. Ex. 8, R. 2001, 2008–2010).

The usufruct in favor of Wilhelm and Marta von Opel.—The gift agreement of October 5, 1931, provided, as stated, that the usufruct in the entire property remained with Wilhelm and Marta von Opel and that Fritz was to receive 20 percent of the dividends and interest. Wilhelm von Opel insisted on these provisions and would not have signed the agreement without them (R. 160, Def. Ex. 8, R. 2000–2001).

A usufruct in German law is an interest *in rem* which includes as a minimum the right to the income from the *res* (here subject to Fritz' contractual right to 20 percent of the income), a right to co-possession of the property, a voice in its management and, in the view of some German authorities, certain voting rights where the property, as here, consists of shares of stock (Fdg. 52, R. 60–61).[5] These rights retained by Wilhelm and Marta von Opel attached to any proceeds of the property (Pl. Ex. 5, R. 1807; Fdg. 36, R. 57). The district court found that such a usufruct was established in the shares of petitioner (Fdgs. 35–

[5] In view of the intent and agreement of the parties, as disclosed by their conduct, that Wilhelm and Marta von Opel retain complete control of the property and in view of the evidence that such control was in fact exercised, the trial court found it unnecessary to attempt to resolve the conflicting theories of German law with respect to voting rights. See *infra*, pp. 14–21.

38, 42, R. 57–59) and that the usufruct continued in existence to the date of vesting (Fdg. 53, R. 61).*

Other understandings between Fritz von Opel and his parents.—The written instrument, however, did not fully reflect the understandings reached between Fritz and his parents (R. 240, 241; Def. Ex. 8, R. 2001, 2073). Thus, although the instrument recited (R. 1806) that it was the desire of the Opel parents that the 600 Opel shares "remain with the male line of our family in order to preserve a personal connection between the bearers of the name of Opel and the work of our father Adam Opel," it had been agreed by all parties that Fritz von Opel should promptly leave for New York to convert the shares into gold or dollars (R. 229, 234, 613–617, 2001; *cf.* Fdg. 18, R. 54–55). In selling the shares, moreover, Fritz acted, not as donee, but as attorney in fact for Wilhelm von Opel under a power of attorney given him after the date of the gift (Pl. Exs. 4, 6, R. 1804, 1807). At no time did he

* Petitioner seems to attack these findings (Br., p. 27, n. 13). They were affirmed by the Court of Appeals (R. 2327). Petitioner suggests no reason—and we can conceive of none—for departure from the ordinary rule that this Court will not review findings of fact which have been concurred in by two courts below. *Allen* v. *Trust Co. of Georgia*, 326 U. S. 630, 636; *Comstock* v. *Group of Institutional Investors*, 335 U. S. 211, 214; *Anderson* v. *Abbott*, 321 U. S. 349, 356. That rule is particularly applicable where, as here, the evidence consisted largely of testimony and raised issues of credibility. In any event, the findings were abundantly supported by evidence.

inform any official of General Motors that he was the donee of these shares (R. 651).[7]

Another oral understanding was that Fritz would transfer the proceeds of the sale to a holding company to protect the interests created (Def. Ex. 8, R. 1987, 2001, 2008). In fact, petitioner was acquired by the von Opels within a few months of the October 1931 agreement (Def. Ex. 8, R. 2006, 2008). Fritz von Opel swore, in an affidavit filed in 1935, that upon the execution of the 1931 deed "my father received an oral stipulation from me which was not included in the document, to the effect that these shares or their proceeds would be transferred by me immediately to a corporation whose shares would be distributed or held so as to safeguard the various interests in the stock or its proceeds set forth in the deed of gift" (Def. Ex. 8, R. 2001). Fritz further stated that he discussed with his father the proposed purchase of petitioner, and that his father agreed that petitioner "might serve as the holding company originally contemplated between us" (R. 2008; see Fdg. 20, R. 55). One reason for the selection of petitioner as that

[7] Indeed, while Fritz was in New York, Wilhelm von Opel was negotiating a modification of the option agreement with General Motors' European representative (Def. Exs. 6, 7, R. 1967, 1968). At first he authorized Fritz to conclude an agreement on the basis of his modification (Def. Ex. 6, R. 1967) but later ratified the sale on the terms on which Fritz and the officers of General Motors had agreed (Def. Ex. 58, R. 2229).

vehicle was that Hans Frankenberg, a Swiss businessman in whom Wilhelm von Opel had confidence, had already agreed to act as director of petitioner (R. 954–955). Upon the purchase of petitioner by the von Opels, Frankenberg was, at Wilhelm's request, made its managing director (Fdg. 39, R. 58).[8]

Control by the Opel parents of petitioner and its American investments.—A further understanding of the parties was that Wilhelm von Opel was to exercise complete control over petitioner's management. The district court found that Hans Frankenberg, as managing director of petitioner, acted at all relevant times as agent for Wilhelm von Opel (Fdg. 41, R. 59); that as such agent Frankenberg, from the spring of 1932 to the date of vesting, exercised control over the investments and activities of petitioner (Fdgs. 40, 43, R. 58–59); and that Fritz von Opel's activities in connection with petitioner were to a large degree carried on with the guidance and under the direction of Wilhelm von Opel, or his agent, Hans Frankenberg (Fdg. 45, R. 59).

Petitioner sharply attacked these findings in the district court (R. 1711 *et seq.*). The trial judge refused to modify them, stating that the

[8] The choice of a Swiss corporation may also have been influenced by the fact, which Frankenberg candidly admitted in justifying a fictitious sale of petitioner's shares in 1936, that "after all, Switzerland was the place where capital from all over the world used to come to, just for the purpose of hiding" (R. 842).

evidence as to Frankenberg's agency was "just overwhelming, in my judgment" (R. 1729) and characterizing Frankenberg as "the guiding genius" in petitioner's affairs (R. 1725).

The record amply demonstrates the control exercised over the proceeds of the 600 Opel shares, and over petitioner and its American investments, by Wilhelm von Opel, acting in person or through Frankenberg as agent. A few illustrations of the scope of that control will suffice. We have already noted Wilhelm's participation in the sale of the Opel shares to General Motors. (P. 13, n. 7, *supra*.) The proceeds of that sale were placed in custodian accounts in New York (Pl. Ex. 66, R. 1862); in conformity with the usufruct agreement, the cash and securities were placed in a principal account and the income accrued was divided monthly, 80 percent of income to the principal account, and 20 percent to a separate account for Fritz; Wilhelm was authorized to draw on these accounts (Pl. Ex. 70, R. 1865, 1869–1870). As indicated, Wilhelm agreed to the purchase of petitioner, and caused Frankenberg to be made petitioner's managing director (Def. Ex. 8, R. 2008). Thereafter, Fritz, in acting for petitioner, did so under powers of attorney signed by Frankenberg (Def. Ex. 8, R. 1985, 2009–2010). He was neither an officer nor a director of petitioner. As petitioner's president testified, "the general conduct of business—that is, the manage-

ment of its affairs—was never entrusted to Mr. Fritz von Opel" (R. 1510).

Fritz stated that he frequently consulted with Frankenberg about investments, and that at the end of 1932 he discussed with Frankenberg the investments which had been made or contemplated and Frankenberg "approved of them" (Def. Ex. 8, R. 2011, 2014). In 1933, he was "told" by Frankenberg to convert petitioner's cash into gold; he thereupon purchased $1,250,000 in gold pieces which became the subject of litigation in 1935 (Def. Ex. 8, R. 2014) (see *infra*, pp. 18–20). In 1936 Frankenberg, in New York, directed a fictitious sale (R. 2327) of the stock of petitioner to a group of Swiss "purchasers" in order to avoid holding company taxes in the United States, a transaction which was later reversed (R. 838, 841, 937, 938, 946; Def. Exs. 67, 87, R. 2236, 2278).

During the period 1931–37, many of the detailed transactions in the United States were conducted by one Hoffacker, in whom Fritz von Opel had confidence (Def. Ex. 8, R. 2011, 2019–2036). Among other things, Hoffacker, in 1934, shortly after Wilhelm von Opel was fined 3,500,000 reichsmarks by a German court in connection with the 1931 gift agreement (R. 448), told the American vice president of the Louisiana oil corporations that Wilhelm had "become involved with the Nazis * * * and needed funds," and asked if the Louisiana companies could contribute (R. 1229). An oil lease was accordingly sold for

approximately $150,000, which was transmitted to petitioner (R. 1230).

Hoffacker became a principal officer of most of the American subsidiaries of petitioner.[9] In 1937 Wilhelm von Opel expressed to Fritz strong disapproval of Hoffacker (R. 1236). Not long thereafter Frankenberg caused Hoffacker to be removed from all connection with these companies, and to be replaced by one Ulrich, an old friend of Frankenberg's (R. 1243–1244, 1246, 1197).

In addition to thus discharging a principal officer of the American companies, Wilhelm von Opel, in person and through Frankenberg, exercised the power of final decision over their affairs. For example, in 1937 the American officers of the Louisiana oil companies were summoned to Switzerland to discuss plans for future operation with Fritz and Frankenberg (R. 1239). During these conferences, Frankenberg told one of the Louisiana officials that he had been representing and assisting Wilhelm von Opel for many years, and at the close of these conferences, Fritz expressed to the same official his pleasure that Frankenberg had approved the plans (R.

[9] He held the following positions:

Director and Vice President of Harvard Brewing Co. (Delaware) and President and Chairman of the Board of its Massachusetts subsidiary (Def. Ex. 8, R. 2022, 2027–2028).

Director and Vice President of Spur Distributing Company (Def. Ex. 8, R. 2022, 2024).

Director and President of Oil Production, Inc., and Oil Refineries, Inc. (Def. Ex. 8, R. 2022, 2091).

1242). Later in 1937 the American officers of Spur Distributing Company discussed with Fritz a proposal to set up a system of subsidiary distributing companies (R. 1137). Fritz said that Frankenberg, as his father's agent, would have to "pass on anything of this magnitude"; Frankenberg rejected the proposal and Fritz explained that he regretted the decision but there was nothing he could do about it (R. 1137–1139). In 1938, Frankenberg directed a sale of some of the Louisiana oil properties (R. 1245). In September 1939, Fritz sent a telegram to the American president of Spur stating that "overseas investors" [10] intended to sell the Spur shares (R. 1143; Def. Ex. 105, R. 2301). Fritz later told this official by telephone that he personally regarded the stock highly and regretted the decision to sell it but that his father had ordered Frankenberg to sell it (R. 1144). Apparently, Wilhelm changed his mind, for the stock was not sold. Indeed, in January 1941, the president of Spur suggested that, in view of the possibility of war with Germany, it would be desirable to sell the stock; Fritz, however, then said that his father would not be receptive to the idea (R. 1147, 1148).

Recognition by petitioner and the parties to the 1931 arrangement of its practical effect.—Petitioner and the parties to the 1931 arrangement

[10] Overseas is the English translation of Uebersee and petitioner has sometimes been referred to as Overseas Finance Corporation.

repeatedly disclosed their general understanding concerning the importance of the ownership and control retained by Wilhelm von Opel under the 1931 arrangement.

Thus, the position taken by petitioner in litigation in 1935 and an affidavit filed by Fritz von Opel in support of that position express an unequivocal recognition that petitioner and its assets were the property of Wilhelm von Opel. In that year, petitioner brought an action against the Federal Reserve Bank of New York and others seeking possession of $1,250,000 in United States gold pieces which had been purchased by petitioner in 1933 and were thereafter ordered seized by the Secretary of the Treasury under the Gold Reserve Acts. *Uebersee Finanz-Korporation* v. *Rosen* (S. D. N. Y., 1935), affirmed, 83 F. 2d 225 (C. A. 2), certiorari denied, 298 U. S. 679 (hereinafter referred to as the "Gold case").[11] In an effort to release the gold, petitioner asserted that the real and beneficial owners of it were Wilhelm and Marta von Opel who, as nonresidents of the United States, were not, so petitioner contended, subject to the Gold Reserve Acts. This assertion was supported, *inter alia*, by an affidavit of Fritz von Opel stating that under the 1931 deed "naked title only to the shares was transferred to me" (Def. Ex. 8, R.

[11] The pertiment portions of the record on appeal in that case are set out herein as Defendant's Exhibit 8 (R. 1968-2104).

2000) and that the reservation of a usufruct "left with me a mere legal title plus 20 per cent of the dividends and interest" (R. 2001). He further stated that the shares of petitioner were in Switzerland in a safe deposit box, the key to which was "held by Dr. Frankenberg as agent and representative of my father, Wilhelm von Opel, for the purpose of safeguarding his usufruct" (R. 2017). And in a memorandum filed with the court, petitioner stated that the establishment of the usufruct "means, of course, that the entire beneficial enjoyment * * * would inhere in Wilhelm and Marta von Opel * * * while * * * only a naked legal title analogous to trust or custody would remain in Fritz von Opel" (R. 2084; see also R. 2081–2084).

Nor were such statements made solely for the purposes of litigation. Thus it was testified that, in 1934, speaking of the fine of 3,500,000 reichsmarks imposed upon him by a German court in connection with the 1931 gift agreement, Wilhelm stated that "it was well worth three and a half million marks to have his assets outside of the German locked safe" (R. 569). In 1937, Fritz similarly stated to an American officer of one of petitioner's subsidiaries that he was operating under a usufruct contract with his father and that he had to account to his father for the funds subject to that contract (R. 1236). Again, the president of Spur Distributing Company testified that, while he was in England in August 1939, Fritz by

telephone invited him to come to Germany to meet Wilhelm von Opel, saying "After all, you work for my father and it is rather important that you know him" (R. 1143).[12]

Petitioner's doing of business in Hungary.—Although resting its decision primarily on enemy ownership and control of petitioner, the district court referred to other circumstances as "further evidence of enemy taint" (R. 63). One of these concerned petitioner's Hungarian subsidiary. Petitioner, as we have mentioned, owned all of the stock of Transdanubia Bauxite A. G., a Hungarian corporation mining bauxite in Hungary (Fdg. 22, R. 55; Concl. 5, R. 62–63). It had acquired this property in 1935 for 78,750 Swiss francs and had advanced to the corporation between 1935 and 1942 approximately 110,000 Swiss francs (R. 727–729; Def. Ex. 70, R. 2251). A state of war between the United States and Hungary was declared on December 13, 1941

[12] Some of these statements and some of the testimony set forth in the preceding pages were denied by witnesses for petitioner. These denials raised square-cut issues of credibility which the trial judge unequivocally resolved. He stated that he "frankly believe[d]" the testimony of Mason Houghland (the president of Spur Distributing Company) and his son, denied by Fritz von Opel, as to discussions that they had had with Fritz (R. 1679; see also R. 1734). On the other hand, he found that "there was some evasiveness" about Frankenberg's testimony (R. 1729) and in connection with testimony of petitioner's president, Meier, he made the cogent observation that "there were a great many vague statements from some of these witnesses" (R. 1716–1717).

(Fdg. 31, R. 56). Petitioner held the shares of Transdanubia and carried the investment in that company on its books throughout the war (Fdg. 28, R. 56; Def. Ex. 70, R. 2251–2255). It never took any steps to sever its relationship (Fdg. 30, R. 56). To the contrary, in 1940 when Transdanubia borrowed 32,000 Swiss francs from a Hungarian bank, petitioner had caused a Swiss bank to guarantee the loan and deposited 32,000 francs as collateral (Fdgs. 23–25, R. 55–56), and at quarterly periods through September 1942, this loan was extended upon petitioner's request until Transdanubia repaid the loan in November 1942 (Fdgs. 26, 27, R. 56).

Fritz von Opel, on behalf of petitioner, made several trips to Hungary in 1939 to expedite the production of bauxite (R. 893, 894; Def. Exs. 76, 93, 95, R. 2262, 2286, 2288) and was active in Transdanubia's affairs and its business relationship with Giulini Bros., a German aluminum manufacturer which purchased its bauxite (Def. Exs. 76–82, 92–94, 96, 97, R. 2262–2271, 2285–2287, 2294, 2296). Thus, when on September 16, 1939, after the outbreak of war in Europe, Giulini Bros. wrote Fritz that (Def. Ex. 81, R. 2270)

> you would do meritorious service for the raw-material supply of the German aluminum industry and the entire war economy of Germany if you would tackle with all your energy the resumption of production in the mines.

Fritz promptly telegraphed that "upon receipt of order" he was "immediately ready to travel Budapest for purpose of starting production" (Def. Ex. 82, R. 2271). Fritz, in fact, did go to Budapest in November 1939 (R. 893, 894, 1641; Def. Ex. 93, R. 2286) and shortly thereafter Transdanubia entered into a contract whereby it undertook to deliver 100,000 tons of bauxite to Giulini Bros. in 1940, 1941 and 1942 (Def. Ex. 97, R. 2296). This contract resulted from negotiations carried on by Fritz in Hungary (*ibid.*). Shipments were made pursuant to this contract at least as late as October, November and December, 1941 (Def. Ex. 90, R. 2282, 2283). There is no suggestion in the record that such shipments did not continue at least through 1942 as called for by the contract.

Fritz von Opel's asserted neutrality.—The other subsidiary element of enemy taint considered by the district court concerned Fritz von Opel. The district court found that his activities in connection with the affairs of petitioner were carried on to a large degree "with the guidance and direction of Wilhelm von Opel, or his agent, Hans Frankenberg" (Fdg. 45, R. 59). In addition, it pointed out that despite Fritz' acquisition of neutral citizenship his "roots remained firmly planted" in Germany (Opinion, R. 49).

As indicated above (p. 7), Fritz von Opel was a German citizen until after the outbreak of World War II in Europe. On November 21, 1939, he became a naturalized citizen of Liechten-

stein under unusual circumstances. He at no time resided in Liechtenstein and had never been physically present in that country except while traveling through it (Fdg. 7, R. 52–53). Although Liechtenstein's citizenship law has a three year residence requirement, this may be waived "under extraordinary circumstances that ask for special consideration" (*ibid.*; Pl. Ex. 177, R. 1951). The law also requires the taking of an oath of allegiance, but Fritz at no time did so (Fdg. 9, R. 53). He claimed that his failure to do so was because he was too sick to travel to Liechtenstein (*ibid.*; R. 492). Yet on November 10, 1939, Fritz passed through Liechtenstein on his way to Hungary (R. 893, 492) and on the date of his naturalization he was in Hungary attending to bauxite matters (*supra*, p. 23) (R. 894, 1641; Def. Ex. 93, R. 2286). Fritz paid approximately $10,000 for his naturalization, two-thirds to the community and one-third to the principality (Fdg. 8, R. 53), a sum equivalent to 3 percent of the national budget of that country in 1939 (R. 494–495). While the Liechtenstein naturalization laws require some payment for naturalization, there was no evidence that payments of this magnitude were normal. Fritz explained his acquisition of Liechtensteinean citizenship by saying that he had bought a Liechtensteinean passport for the equivalent of $10,000, and that when captured by the British at Gibraltar in 1940 he had "succeeded in fooling

them" with that passport (R. 1146).[13] In the light of such testimony, the district court, in its opinion, properly characterized Fritz' Liechtenstein citizenship as a "technical status" (R. 48), a matter of "technical form" only (R. 49).

The district court further found that Fritz' statements and acts between November 1939 and Pearl Harbor indicated "a continued interest in the welfare of and sympathy for Germany" (Fdg. 10, R. 53). This finding is abundantly supported. Mention has already been made of his ready response to an invitation to do "meritorious service for * * * the entire war economy of Germany" by speeding up bauxite production in Hungary (*supra*, pp. 22–23). He frequently spoke of "We Germans", and expressed his hopes for an early German victory.[14]

A statement made in January 1941 is particularly revealing not only of Fritz' personal attitudes but also of Wilhelm's dominant position

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[13] He also wrote the president of Harvard Brewing Co. that he had felt "obliged" to acquire another citizenship for business reasons (Def. Ex. 95, R. 2294; see also R. 1609–1610).

[14] Illustrative statements are:

"There isn't going to be much of a war." The English won't fight. All we are going to do is take off a little slice of Poland" (August, 1939). (R. 1142).

"By using rockets and secret weapons, we will finish up this war in no time at all" (early summer, 1940) (R. 1105).

He expressed pleasure in the German progress in France and the low countries and in the fact that "some of his inventions were playing a particular part in it" (early summer, 1940) (R. 1105–1106).

See also statement quoted in the text, p. 26, *infra*.

in the enterprise. At this time, Houghland, the President of Spur Distributing Company, met Fritz in Savannah, Georgia, and pointed out the undesirability of German stock ownership in Spur. He urged that the shares held by petitioner be sold, observing that if the stock was not sold it might in the event of war between the United States and Germany be seized by the Government as had been done with German property in World War I (R. 1147, 1148). Fritz' reply was "We Germans and my father and I have all thought this out" (R. 1148). He explained that if war came, the Spur stock would be in the hands of Swiss nationals and that if Switzerland became involved in the war, it would be in a holding company in a neutral Latin American country (R. 1148).[15]

SUMMARY OF ARGUMENT

I

On the prior appeal herein, *Clark* v. *Uebersee Finanz-Korporation*, 332 U. S. 480, this Court

[15] In fact, it was at about this time that some 36,000 shares of Harvard Brewing Company, purportedly the property of Fritz von Opel's wife and not here in suit, were held for the account of Sociedade Commercial Montefranco, a Brazilian corporation (R. 813–816). Montefranco is a literal translation of the German name Frankenberg (R. 815). Petitioner also in 1939 had dealings in Argentina which involved the establishment of credits in the peso equivalent of $522,548 (R. 926–927; Def. Ex. 108, R. 2303).

Compare also the sham sale initiated by Frankenberg in 1936 in an unsuccessful effort to avoid taxes (*supra*, p. 16).

established the rule that a neutral corporation, owned or controlled by enemies, is itself an enemy, ineligible to recover property vested under the Trading With the Enemy Act. Petitioner concedes the correctness of this rule. It argues that there was no such ownership or control here; that the entire ownership of its shares, and legal and actual control of its affairs, rested in Fritz von Opel, an asserted neutral. Fritz is claimed to have acquired these interests by gift from his father in 1931. This contention is directly contrary to explicit findings by the courts below, which are supported by abundant evidence. The district court found that the primary purpose of the 1931 transaction was to place certain assets then owned by Wilhelm von Opel outside the scope of the German foreign exchange controls. It further found that Wilhelm, while transferring legal title to the assets, had reserved a substantial ownership interest in them, including a right to possession and the right to the income; that Wilhelm exercised complete control of petitioner; and that to the extent that Fritz von Opel acted in petitioner's affairs, he did so subject to the guidance and direction of his father.

II

Such ownership and control satisfy the rule laid down by this Court on the prior appeal. The test of enemy ownership or control is con-

cerned with economic fact, not legal form. It disregards formal title and looks at beneficial ownership. It considers control exercised *de facto*, whether or not resting in legal basis, and is satisfied by potential control without requiring a showing of its actual exercise. If, as here, enemies have the power to "make and unmake [the corporate] officers, dictate their conduct mediately or immediately, prescribe their duties and call them to account", *Daimler Co., Ltd.* v. *Continental Tyre and Rubber Co.*, [1916] 2 A. C. 307, 340; the corporation is an enemy. Here enemies not only exercised control but owned the primary beneficial interest.

Petitioner's further suggestion that there must be proof of actual utilization of the properties for economic warfare is in effect an argument that the barn door can be locked only after the horse is stolen. Seizure of enemy property has never operated on any such stultifying principle; it is designed to deprive enemies of the opportunity of benefiting from assets of any kind in this country, *Propper* v. *Clark*, 337 U. S. 472, 481, and it reaches any property "which the adherents of the enemy have the power of devoting to the enemy's use." *Miller* v. *United States*, 11 Wall. 268, 306. Here, Wilhelm von Opel, an enemy, had substantially all the power over petitioner's American assets which he would have had, had he owned them directly.

III

While the ownership and control of petitioner by an enemy is sufficient, we believe, to defeat the present action, there are two additional circumstances, referred to by the District Court although not considered by the Court of Appeals, which confirm this result. In the first place, the only asserted non-enemy interest in petitioner is in Fritz von Opel. Fritz is a native of Germany, whose citizenship of Liechtenstein, hastily acquired in November, 1939, was properly deemed by the district court a matter of technical form only. In all his activities relating to petitioner, Fritz acted under the control of his father and as his father's agent. Accordingly, it is artificial in the extreme to describe any interest that Fritz may have owned as an independent neutral interest. In the second place, petitioner, through a wholly-owned subsidiary, did business in Hungary, an enemy country. Under Section 2 of the Trading With the Enemy Act a foreign corporation which does business in enemy territory is an enemy. In the light of this Court's decision on the prior appeal, we believe that the doing of such business through a subsidiary in whose affairs petitioner actively participated was properly regarded by the district court as constituting an additional element of enemy taint.

IV

Petitioner's claim for a partial recovery is in effect a claim for complete recovery. It seeks return to it of the entire vested assets, and suggests that the Custodian should instead vest, and enforce in Switzerland, interests created by an agreement concluded in Germany in shares of a Swiss corporation located in Switzerland. The suggestion is plainly illusory. Any claim which petitioner might make to a true partial recovery is precluded here, having been rejected by the trial judge in a proper exercise of his discretion as not having been seasonably advanced and as requiring in effect that the trial be reopened for additional evidence and arguments. In any event, as petitioner itself concedes, a claim to partial recovery must fail where, as here, the plaintiff is shown to have been controlled by an enemy.

ARGUMENT

The principal questions in this case are questions of fact. Petitioner apparently concedes, as it must under this Court's decision in *Clark* v. *Uebersee Finanz-Korporation*, 332 U. S. 480, that under the Trading With the Enemy Act, as amended during World War II, a corporation actually controlled by enemies is itself an enemy and is barred from recovering vested assets (Br. pp. 11, 14, 19, 20, 21, 24). It similarly concedes that where a corporation is thus controlled by the enemy "the entire corporate assets in

the United States might be seized and the corporation itself could not recover them" (Br. p. 26). In such a case it agrees that any asserted neutral interest in the corporation can be recovered, if at all, only in a separate suit by the neutral stockholder and that the present suit is concerned exclusively with the right of the corporation to recover (*ibid.*; see also Br. p. 10).

Thus, petitioner concedes that all of its contentions in this case must fail if it is found to have been owned and controlled by enemies. Its argument is devoted primarily to the assertion that it was not so owned and controlled. That assertion is directly in conflict with explicit findings of fact by the district court, and with overwhelming evidence. In the first point of this brief, therefore, we shall discuss the findings and the supporting evidence which establish that petitioner was owned and controlled by enemies. In succeeding sections of this brief we shall demonstrate that petitioner's concession was required, and that by reason of enemy ownership and control, as well as other circumstances, petitioner is an enemy and may not recover any part of the property here sued for.

I.

PETITIONER WAS OWNED AND CONTROLLED BY ENEMIES

Petitioner asserts that "no enemy control or ownership of petitioner's shares was present" (Br. p. 11; see also p. 24). It asserts that the findings of the district court establish that Fritz

von Opel had "beneficial ownership" of petitioner's shares, "subject only to an option, never exercised" on the part of his parents to demand 80% of the dividends, and that "both legal control and actual control of the corporation" were in Fritz von Opel (Br. pp. 7–8).

In fact, the district court found the exact opposite. It concluded that petitioner "is indirectly owned and controlled by enemies" (Concl. 2, R. 62). The scope and extent of that ownership and control is shown by the findings and evidence which we have summarized in the Statement, *supra*, pp. 7–21. Because petitioner's entire argument depends, however, on the correctness of its view of the facts we shall, at the risk of repetition, restate the actual scope of the interests held by enemies in petitioner.

In the first place, the Opel parents had the rights expressed by the German law concept of a usufruct. Those rights were found by the District Court (Fdg. 52, R. 60–61) to be rights, *in rem*, in all the shares of petitioner, and to include (i) the right to the income from the property (here subject to a contractual obligation to pay 20% of that income to Fritz von Opel (R. 2334)), (ii) the right to co-possession of the shares (in fact the evidence is clear that Wilhelm von Opel's agent had the exclusive possession),[16] (iii) the

[16] He had the only key to the safe deposit box in which petitioner's shares were kept (R. 623; Def. Ex. 8, R. 2017; see Fdgs. 37, 38, 42, R. 57, 58, 59).

right to prevent sale or disposition of the shares, and (iv) certain rights of management of the shares and the corporation issuing them. These rights are clearly substantial property interests (R. 2327).

But these rights are only the minimum statement of what the Opel parents possessed. As we have pointed out (*supra*, pp. 12–31), the instrument of October 5, 1931, did not reflect the entire understanding between the parties. In particular, it was clearly understood that Wilhelm von Opel was to retain the entire control of the 600 Opel shares which were the subject of that instrument, and of their proceeds. For this reason, those proceeds were transferred to a holding company, petitioner, "to safeguard the various interests in the stock or its proceeds" (see p. 13, *supra*), and Frankenberg, Wilhelm's trusted agent, was at Wilhelm's request made managing director of petitioner. From that time until the date of vesting, as the district court found (Flgs. 40, 41, 43, 45, R. 58–59), Wilhelm von Opel, acting largely through Frankenberg as his agent, exercised control over petitioner and directed the activities of Fritz von Opel in so far as they related to petitioner.[11]

Petitioner's view of the facts is in flat contradiction to these express findings. In addition,

[11] In the light of the foregoing, petitioner's unsupported assertion (Br. P. 24) that it "was acquired for the purpose of precluding the enemy from obtaining or utilizing its assets" must be dismissed as pure fantasy.

it is wholly inconsistent with the dominant purpose of the 1931 transaction as found by the Court. Petitioner's argument assumes, in effect, that in October 1931, Wilhelm and Marta von Opel made an outright gift to their son of property worth approximately $3,500,000. None of the circumstances surrounding the transaction suggest that that was its purpose. The transaction was initiated and carried out in great haste at a time when Wilhelm feared financial collapse in Germany and when German foreign exchange controls were being drastically tightened (Fdgs. 13, 14, R. 54). Its "primary object," as the district court found, was "to obtain payment upon sale of the Opel shares in the form of gold or American currency, instead of German reichmarks" (Fdg. 18, R. 55).[18]

In short, as the courts below in effect found, the 1931 transaction, although not a sham, was a transaction of only limited significance with respect to the economic rights of the parties to

[18] That this was its purpose is shown not only by the express statements of the attorney who drafted the instrument (*supra*, pp. 8–9) but also by the way in which it was prepared and carried out. On or shortly before October 2, 1931, Fritz von Opel, then in Belgium, came to his father's house in Germany (R. 405, 408). On October 2, 1931 (the day on which amendments were adopted tightening the German foreign exchange laws (Def. Ex. 113, R. 2309)), Fritz consulted Hachenburg, Wilhelm's regular lawyer and a man of preeminent reputation (R. 323, 410, 590). Thereupon

it. It was effective to give Fritz von Opel legal title to the 600 Opel shares and their proceeds (Fdg. 18, R. 54–55). We may assume that it gave Fritz a valid contractual claim against his parents for 20% of the interest and dividends (see R. 2334). We may also assume that on the death of Wilhelm and Marta the entire property in the shares would pass to Fritz or his legitimate issue, provided they survived the Opel parents. In this aspect, the instrument made a transfer to take effect on death which did not affect the substantial beneficial ownership and complete control held by Wilhelm and Marta von Opel at the outbreak of the war and on the date of vesting. In

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Hachenburg drafted various preliminary papers, but in a letter dated October 5, 1931, stated that several aspects of the matter, especially the tax aspects, required further study (Pl. Exs. 7–10, R. 1809–1820).

Without further ado, however, Wilhelm on October 5, took the matter to another attorney who had not generally acted as counsel for any of the von Opels (R. 213, 592) and who, as he testified, in "about as much time * * * as you have for catching a lunch" (R. 239) prepared the instrument which the court found was signed the same day. Two days later, on October 7, Fritz sailed for New York to sell the 600 Opel shares for dollars and General Motors shares (R. 650–651, Pl. Ex. 6, R. 1807). This extraordinary haste in a transaction of this magnitude, this unwillingness to wait for the resolution of complex tax and other problems, is explainable only on the view that the transaction was not intended to have any important effect on the economic rights of the parties but merely to serve as a convenient device by which Wilhelm could avoid the impact of the German foreign exchange regulations.

view of that ownership and control the Court of Appeals was fully warranted in saying (R. 2337):

> This case does not involve a diluted "taint"; it involves the ownership by enemy nationals of the economic benefits of American business.

Petitioner's view of the facts is also completely inconsistent with the assertions made by petitioner itself in litigation against agencies of the United States in 1935. In an affidavit filed on petitioner's behalf in the "Gold case" (see *supra*, pp. 19–20) Fritz von Opel stated that the usufruct reserved by the 1931 instrument "left me with a mere legal title plus 20% of the dividends and interest" (R. 2001). And a memorandum submitted by petitioner similarly stated that the establishment of the usufruct "means, of course, that the entire beneficial enjoyment * * * would inhere in Wilhelm and Marta von Opel * * * while only a naked legal title analogous to trust or custody would remain in Fritz von Opel" (R. 2084).[19] Even if we assume that petitioner can now be heard to assert the falsity of its own representations to the courts of the United States, the courts below were clearly warranted in accepting the version of the facts insisted on by petitioner in 1936. Indeed, that version is reflected in every statement made by

[19] A footnote added: "The 20% of dividends and interest * * * is a grant out of the reserved estate, proceeds from the usufructuary, and does not give Fritz von Opel any part of the beneficial use and enjoyment" (R. 2084).

Fritz and Wilhelm von Opel prior to the present suit.

A word further may be appropriate on petitioner's suggestion that the interests and powers retained by Wilhelm and Marta von Opel were contingent or unexercised. *E. g.*, Br. pp. 7–8, 23. We do not believe it is necessary that they be exercised; the Trading With the Enemy Act looks to potentialities as well as to rights actually exercised (see pp. 48–50, 52–53, *infra*). In any event, they were exercised.

Thus, the district court found that Frankenberg, as Wilhelm von Opel's agent, "exercised control" over petitioner's affairs to the date of vesting (Fdgs. 40, 43, R. 58–59) and that Fritz' activities "were carried on" with the guidance and direction of Wilhelm and Frankenberg (Fdg. 45, R. 59).[20] We have summarized above the

[20] Petitioner states that "the stock was voted by or for the neutral holder of legal title, Fritz von Opel" (Br. 6). This is surprising in the face of testimony by petitioner's witness Frankenberg, its managing director, that he had to have the key to the safe deposit box in which the shares were kept "to get the stock out from time to time *to vote it*" (R. 857). [Emphasis supplied.] In view of Frankenberg's status as agent of Wilhelm von Opel, the implications of this statement are obvious. Petitioner's record references are merely to an equivocal and unresponsive statement by Meier, petitioner's president, and to minutes of stockholders' meetings in 1932 and 1935 at which Fritz was recorded as not present and the entire shares were recorded as voted by Frankenberg (1932) or by various of the corporate officers including Frankenberg (1935). To the same effect see R. 2052 (1933 meeting), R. 2055 (1934 meeting).

abundant evidence showing that such control was in fact exercised. Thus Wilhelm specifically approved the decision to acquire petitioner; Frankenberg was made petitioner's managing director at Wilhelm's request; Frankenberg, in response to Wilhelm's expressions of disapproval, caused the removal of a key officer of the American subsidiaries in whom Fritz had confidence; Frankenberg passed on all important transactions and Fritz recognized that he was powerless to override Frankenberg's decisions.[21] Significantly, Fritz von Opel never participated even formally in the management of petitioner's affairs, but acted under specific powers of attorney issued by the corporate directors from time to time (R. 1510–1511).

Petitioner, in its statement of facts (Br. pp. 6–7), appears to argue, however, that Franken-

[21] Petitioner states (Br. p. 6) that control was inferred "simply because Frankenberg was consulted and his advice obtained." We need only refer to one incident, testified to by Houghland, the American president of Spur and a witness whom Judge Laws said he believed (R. 1679). Referring to a proposal to set up a chain of subsidiaries, Houghland testified that Fritz told him that Frankenberg "would have to pass on anything of this magnitude" (R. 1137). The matter was accordingly submitted to Frankenberg, who rejected the proposal (R. 1138). Houghland testified further (R. 1139):

"Well, [Fritz] said he was sorry that Dr. Frankenberg did not approve the idea; that he himself did approve the idea and he thought it was a wise one, which, incidentally, it certainly turned out to be; but that Dr. Frankenberg was his father's financial representative; that there was nothing that could be done upon a decision of this sort after Dr. Frankenberg did not approve."

berg's agency for Wilhelm ceased as a matter of law upon the outbreak of war between the United States and Germany, Frankenberg then being in the United States. From this it argues that all enemy control of petitioner automatically ceased with the outbreak of war. The premise on which the argument is based is erroneous. The very cases cited by petitioner (Br. p. 7, n. 4) establish that

> Agencies, created before the war, and not requiring intercourse across the enemy's frontier, such as for the collection of debts, preservation of property, and so forth, are not terminated by war. [*Sutherland* v. *Mayer*, 271 U. S. 272, 288.]

Accord: *Williams* v. *Paine*, 169 U. S. 55 (upholding a wartime sale by the agent of an enemy).[22]

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[22] In *Insurance Co.* v. *Davis*, 95 U. S. 425, this Court, although holding that the particular agency before it had terminated said (at p. 430):

"If the agent has property of the principal in his possession or control, good faith and fidelity to his trust will require him to keep it safely during the war, and to restore it faithfully at its close."

Williams v. *Paine* limited the holding in the *Davis* case to cases of insurance agents who were required during the war to remit funds across belligerent lines—conduct necessarily involving prohibited intercourse with the enemy.

Other cases in which agencies, in addition to those for the collection of debts, have been held to survive the outbreak of war are: *Fujino* v. *Clark*, 71 F. Supp. 1, (D. Hawaii), affirmed, 172 F. 2d 384 (C. A. 9), certiorari denied, 337 U. S. 937; *Second Russian Insurance Co.* v. *Miller*, 297 Fed. 404 (C. A. 2), affirmed, 268 U. S. 552; *Hubbard* v. *Matthews*, 54 N. Y. 43; *Pipe* v. *The La Salle*, 49 F. Supp. 662 (S. D.

But even if the premise had been valid, the conclusion would prove too much. Petitioner asks this Court to hold that Wilhelm's complete control of petitioner and its assets, established as an integral part of the 1931 arrangements and consistently exercised during ten years, suddenly and automatically ceased. The very event—the outbreak of war—which creates the power to vest enemy-controlled property is said to immunize the property from its exercise. The contention almost answers itself.

Normally, the inference is warranted that a relationship or course of conduct, proven to exist over a period of time, continues to exist thereafter. *E. g., Penn Oil Co.* v. *Vacuum Oil Co.*, 48 F. 2d 1008 (C. A. D. C.); *Easterday* v. *United States*, 292 Fed. 664 (C. A. D. C.), certiorari denied, 263 U. S. 719.[22] (See Fdg. 40, R. 58.) Here, however, we have more than a course of conduct; Wilhelm's powers of control were an integral part of the property arrangements made by the 1931 transaction. Those property arrangements were in force, unchanged, on the date of vesting, and there is no evidence that any of the parties to them, or any of petitioner's officers, by word

N. Y.); *Daimler Co.* v. *Continental Tyre & Rubber Company*, [1916] 2 A. C. 307, 326, 349.

[22] See also *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. 2d 652, 660 (C. A. 9); *National Labor Relations Board* v. *Puget Mansing Wood Products Co.*, 109 F. 2d 552 (C. A. 6); Wigmore, *Evidence* (1940 ed.), Sec. 2530.

or deed disavowed the prior explicit recognition of Wilhelm's dominant position (Fdg. 40, R. 58). Certainly there was no physical impediment to Wilhelm's continued exercise of control. Wilhelm was in no way barred from communicating with petitioner in Switzerland, and petitioner, in turn, was free at all times to communicate with the United States.

Accordingly, the absence of direct proof of the exercise of control after the outbreak of the war does not help petitioner. Although petitioner had the burden of proof, *Thorsch* v. *Miller*, 55 App. D. C. 295, 297, 5 F. 2d 118, 121, appeal dismissed, 274 U. S. 763; *Von Zedtwitz* v. *Sutherland*, 58 App. D. C. 153, 154, 26 F. 2d 525, 526; *Sturchler* v. *Hicks*, 17 F. 2d 321, 322 (E. D. N. Y.), the Government, with an abundance and explicitness of proof unusual on such a question as the control of a foreign corporation, clearly proved not only the existence but the exercise of German control from 1931 to 1941. To require, in addition, direct proof of the actual exercise of control by an enemy over American properties after the outbreak of war, would be tantamount to insisting that the Trading With the Enemy Act could become operative only after the enemy had succeeded in doing what the Act was designed to prevent. No such stultifying restriction can be read into this wartime statute. In general, enemy status under the Trading With the Enemy Act is established at the outbreak of war and is not lost

by acts occurring thereafter. *Schrijver* v. *Sutherland*, 57 App. D. C. 214, 19 F. 2d 688, certiorari denied, 275 U. S. 546 (ownership); *Société Suisse* v. *Cummings*, 99 F. 2d 387 (C. A. D. C.) (doing business in enemy territory); *Sarthou* v. *Clark*, 78 F. Supp. 139 (S. D. Cal.) (acting as enemy agent); *Beck* v. *Clark*, 88 F. Supp. 565 (D. Conn.) (ownership). *A fortiori*, control shown to exist at the outbreak of war cannot be presumed thereafter to have ceased.

The suggestion that rights of ownership were not exercised is equally without substance. It is true that petitioner declared no dividends. This is precisely what might have been expected. Any distribution of dividends to Wilhelm and Marta von Opel would have defeated the very purpose of the 1931 arrangements. Their principal objective was to remove the funds from the reach of the German foreign exchange control laws. Once that was accomplished, the real value of these assets to Wilhelm and Marta was not that they represented capital or even a source of income—this they were even while they were subject to German laws—but that they were *free* assets, free, that is, from German monetary controls. Obviously Wilhelm, a man of great wealth, had no need for additional income in Germany. As long as he had sufficient funds within Germany for his support, it would have been utter nonsense to channel petitioner's dividends into Germany where the exchange control laws would have compelled their conversion into German marks.

To keep both the income and the principal "free" it had to be kept "outside the German locked safe". (see p. 20, *supra*). On the other hand, when he desired foreign exchange Wilhelm could and did draw on petitioner. Thus one of the American subsidiaries raised $150,000 by sale of oil properties to help pay Wilhelm's fine to the German government (R. 1229–1230). And petitioner paid Wilhelm's expenses on a trip to Hungary and a trip to South America (Fdg. 53, R. 61). In short, Wilhelm treated petitioner's funds like a bank acount on which he could draw at will.

II.

BY REASON OF SUCH ENEMY OWNERSHIP AND CONTROL PETITIONER WAS AN ENEMY INELIGIBLE TO RECOVER VESTED PROPERTY IN THE PRESENT SUIT

Originally the Trading With the Enemy Act adopted a strictly territorial concept of "enemy" as applied to corporations. Under Section 2 of the Act, as enacted in 1917, a corporation was an enemy if it was incorporated in or did business within enemy or enemy occupied territory. And it was held that a corporation incorporated in neutral territory was not an enemy under this provision even though wholly owned and controlled by enemies. *Behn, Meyer & Co.* v. *Miller*, 266 U. S. 457; *cf. Hamburg American Co.*, v. *United States*, 277 U. S. 138. By the First War Powers Act, 1941, however, Congress amended Section 5 (b) of the Act to authorize the vesting of property of any foreign country or national

thereof. The applicable executive definitions of the term "national" included "any * * * corporation * * * which on or since [the effective date of Executive Order 8389] was or has been controlled by, or a substantial part of the stock, shares, * * * or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly," one or more "nationals" of the designated country.[24]

These amendments reflected a legislative awareness that the Axis countries and their nationals, by various means, had acquired indirect ownership or control of nominally neutral property. Indirect ownership was exercised through nominees, trusted agents and complex holding company structures, the stock of such holding companies generally being in the form of bearer shares whose ownership was exceedingly difficult to trace; control was often divorced from legal title or ownership and exercised through options,

[24] Executive Order 8389 (April 10, 1940), 5 F. R. 1400, as amended by Executive Order 8785 (June 14, 1941) 6 F. R. 2897, sec. 5 E (ii); made applicable to the exercise of the vesting power by Executive Orders 9095 (March 11, 1942), 7 F. R. 1971, and 9193 (July 6, 1942), 7 F. R. 5205, sec. 10. As a corporation controlled and beneficially owned by nationals of Germany petitioner was a "national of a designated enemy country" within the meaning of Executive Order 9193, and was determined to be such by the Custodian, Vesting Order No. 51, 7 F. R. 6503; Amendatory and Supplemental Order No. 1 to Vesting Order No. 14, 9 F. R. 8083.

These executive definitions were ratified by Congress, Joint Resolution of May 7, 1940, 54 Stat. 179; First War Powers Act, 1941, sec. 302, 55 Stat. 840.

contractual relationships, gentlemen's agreements, possession of vital technical information and loyalty of key personnel.[25] By such devices American property could be made as readily available for purposes of economic warfare as if it were owned outright, but with less investment, less risk and greater possibilities for concealment.

On the previous appeal in this action, this Court recognized that the 1941 amendments were adopted to meet the challenge of such devices by giving the President power "to deal effectively with property interests which had either an open or concealed enemy taint" (332 U. S. at 485–486). It held that in order to give effect to those amendments the definitions set forth in section 2 must be regarded as "merely illustrative, not exclusionary" (pp. 488–489) so that all persons or corporations affected with an "enemy taint" are now within reach of the term "enemy".

Although this Court did not attempt a comprehensive definition of the new concept of enemy, it declared unequivocally that the result in *Behn, Meyer & Co.* v. *Miller, supra*, was "destructive

[25] See H. Rept. 1547, 77th Cong., 1st sess., p. 3; United States Treasury Department, *Administration of the Wartime Financial and Property Controls of the United States Government* (1942), pp. 29–31; Hearings before a Subcommittee of the Senate Committee on Military Affairs (Kilgore Committee) 79th Cong., 1st Sess., pursuant to S. Res. 107 and S. Res. 146, June–December, 1945, pp. 49, 52, 68–9, 564–85, 969–77, 1063, 1203–1221; H. Rept. No. 2398, 79th Cong., 2d Sess., p. 3.

of the objectives of the 1941 amendment" (p. 486) and had no current vitality (p. 488). It thus reversed completely the policy, embodied in that case, of refusing to determine the enemy status of a corporation by the status of those who owned or controlled it. It left no doubt that a corporation which "was owned or controlled by enemy interests" (p. 486) is itself an enemy.[26] As we understand its Brief, petitioner concedes that if it was owned and controlled by enemies it cannot recover anything in this action (see *supra*, pp. 30–31).

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[26] A similar test of enemy ownership or control has also been made applicable to claims for discretionary administrative return by Section 32 (a) (2) (E) of the Act (referred to by this Court, 332 U. S. at 490), and has been recognized in international agreements, see Art. 11 (b) of the Brussels Agreement of December 5, 1947, quoted at page 30, n. 10, of petitioner's brief.

In Section 39 of the Act, added July 3, 1948, Congress, in prohibiting judicial return to "nationals" of Germany or Japan, reaffirmed the tests embodied in the 1941 amendments and Executive Orders issued thereunder. Since petitioner, being owned and controlled by enemies, was both a "national" of Germany within Executive Order 8389 and a "national of a designated enemy country," within Executive Order 9193 (see note 24, *supra*), Section 39 affords an alternative ground for supporting the result below. See Brief for Petitioner in *McGrath* v. *Nagano*, No. 169, this Term. Respondent so urged in the court of appeals, but that court found it unnecessary to pass on the question.

Compare Section 8 of the British "Distribution of German Enemy Property Act, 1949," 12, 13 & 14 Geo. 6, Ch. 85, which includes in its definition of German property which will not be returned, the property of any corporation "which * * * was controlled by" German nationals resident in Germany.

This test of enemy ownership or control is concerned with economic fact, not legal form. Thus, it is immaterial that, for reasons of his own convenience, Wilhelm von Opel by the 1931 transaction placed "legal title" (Fdg. 18, R. 55) to the shares in his son's name. As the court below held, the "ownership by enemy nationals of the economic benefits" of the property is determinative, and the "bare ownership of a sterile legal title" is of no consequence (R. 2327). In administering the Trading With the Enemy Act the courts have always looked, not at legal title, but at "beneficial ownership." *Stoehr* v. *Wallace*, 255 U. S. 239, 251. See also the district court opinion in the same case, 269 Fed. 827, 835 (S. D. N. Y.); *Standard Oil Co.* v. *Markham*, 64 F. Supp. 656, [illegible] (S. D. N. Y.).[27]

[27] Compare *Hodgskin* v. *United States*, 279 Fed. 85, 90 (C. A. 2); *Kind* v. *Clark*, 161 F. 2d 36, 47 (C. A. 2); *Standard Oil Co.* v. *Clark*, 163 F. 2d 917 (C. A. 2), certiorari denied, 333 U. S. 873; *Fujino* v. *Clark*, 172 F. 2d 384, 385 (C. A. 9), certiorari denied, 337 U. S. 937. The cases cited in this note used language of "sham", and many of them disclosed an attempt by the parties to conceal the enemy's beneficial ownership. Whether or not there was concealment is immaterial; the Act reaches property having an "open or concealed enemy taint." *Clark* v. *Uebersee Finanz-Korporation, A. G.*, 332 U. S. 480, 486. See *Stoehr* v. *Wallace*, 255 U. S. 239; *Fujino* v. *Clark*, *supra*. Nor do we perceive any essential difference, for present purposes, between a transaction which is disregarded as a sham, and a transaction which, when given effect according to its terms, leaves the beneficial interests in the enemy. Thus in *Stoehr* v. *Wallace*, *supra*, the district court assumed that legal title was in American hands (269 Fed. at 835) and the rationale of this Court's opinion was that

In construing the Act as giving the Executive "flexible powers" to reach interests which "masqueraded under * * * innocent fronts" and to deal with enemy "devices" for acquiring "indirect control or ownership" of American property (332 U. S. at 484–485), this Court, on the prior appeal in this case, reflected a concern for practical results without regard to the legal niceties by which they may be achieved. In other contexts this Court has emphasized that the existence of control turns on actualities and presents issues of fact "to be determined by the special circumstances of each case". *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 145.[28]

a transfer of legal title which was "made to avoid inconvenience" and which left "beneficial ownership" in an enemy could not prevent seizure (255 U. S. at 251).

[28] See the report of the House Committee on the bill which became the Federal Communications Act of 1934, 48 Stat. 1064, 47 U. S. C. 151, referred to by the Court, 307 U. S. at 145:

"* * * No attempt is made to define "control", since it is difficult to do this without limiting the meaning of the term in an unfortunate manner. Where reference is made to control the *intention is to include actual control as well as what has been called legally enforceable control.* It would be difficult, if not impossible, to enumerate or to anticipate the many ways in which actual control may be exerted. A few samples of the methods used are stock ownership, leasing, contract, and agency. It is well known that actual control may be exerted through ownership of a small percentage of the voting stock of a corporation, either by the ownership of such stock alone or through such ownership in combination with other factors." [Emphasis added.] (H. Rept. 1850, 73d Cong., 2d Sess., p. 5.)

And the courts have recognized that "control" and controlling influence "include the power to control and the power to exert a controlling influence, as well as the actual exercise of such power" (*Public Service Corporation* v. *Securities and Exchange Commission*, 129 F. 2d 899, 903 (C. A. 3); *Detroit Edison Co.* v. *Securities and Exchange Commission*, 119 F. 2d 730, 739 (C. A. 6), certiorari denied, 314 U. S. 618) and "may spring as readily from advice constantly sought as from command arbitrarily imposed" (*American Gas & Electric Co.* v. *Securities and Exchange Commission*, 134 F. 2d 633, 642 (C. A. D. C.), certiorari denied, 319 U. S. 763).

The English courts have applied an equally practical approach to the problem of determining whether a corporation incorporated in neutral territory is an enemy. Those courts adopted during World War I and have since applied, the rule that a neutral corporation, owned or controlled by enemies, is an enemy. *Daimler Co. Ltd.* v. *Continental Tyre & Rubber Co.*, [1916] 2 A. C. 307; *The St. Tudno*, [1916] P. 291; *The Polzeath*, [1916] P. 241; *The Michigan*, [1916] V Ll. P. C. 421; *The Hamborn*, [1919] A. C. 993; *In Re Badische Co., Ltd.*, [1921] 2 Ch. D. 331. They have said that "the true test is control," *In Re Badische Co., Ltd., supra*, at 371. Enemy ownership sufficient to carry proposals at a stockholders' meeting has been held to establish such control. *The Polzeath, supra*; see *The Hamborn*,

supra, at 997. And a corporation has been said to be enemy "if its agents or the persons in de facto control of its affairs, whether authorized or not" are resident in enemy territory or taking instruction from persons so resident. *Daimler Co.* v. *Continental Tyre & Rubber Co., supra*, at 345.[29]

Applying these tests here, it is clear that Wilhelm von Opel, directly and through Frankenberg, exercised both as to petitioner and its American subsidiaries the power to "make and unmake [the corporate] officers, dictate their conduct mediately or immediately, prescribe their duties and call them to account." *Daimler Co., Ltd.* v. *Continental Tyre & Rubber Co., supra*, at 340. Such control, without more, justifies the seizure and retention of the properties here in suit.

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[29] Comparable principles have long been applied by American courts in the field of prize law, to which the Trading with the Enemy Act is historically and constitutionally related (see *Stoehr* v. *Wallace*, 269 Fed. 827, 840 (S. D. N. Y.), affirmed, 255 U. S. 239). Thus, a neutral partner's share in a cargo left under the control and management of the other partners who were enemies, has been held to be properly condemned. *The William Bagaley*, 5 Wall. 377; *The San Jose Indiano*, Fed. Cas. No. 12322 (C. C. D. Mass); see also *The Friendschaft*, 4 Wheat. 105, 107, and *The Cheshire*, 3 Wall. 231, 233. Similarly, a ship surrendered by a neutral to enemy control is properly subject to condemnation when employed by the enemy in belligerent trade. *The Hart*, 3 Wall. 559, 560 (1865); *The Bermuda*, 3 Wall. 514, 556–557 (1865); *The Adula*, 89 Fed. 351, 355 (S. D. Ga.), affirmed, 176 U. S. 361.

It is not necessary for present purposes to resolve the problems that might arise in a case in which control was divorced from ownership, or accompanied by only a "negligible" ownership interest (332 U. S. at 489-490). As the Court of Appeals said, "this is not a borderline case" (R. 2333). Here the enemy's practical control is joined with a substantial ownership interest in all of petitioner's shares. Nor is there here any problem of protecting neutral investments. (See Pet. Br. p. 15.) The only assertedly neutral interest in petitioner is that of Fritz von Opel. That interest was acquired by gift; in acquiring and holding it Fritz understood, and indeed repeatedly asserted, that his father had the beneficial ownership and the entire control, and he acted, as the district court found, subject to his father's direction. Thus, quite apart from the question whether Fritz can in any real sense be deemed a neutral (see pp. 56–57, 63–64, *infra*), he bears no conceivable resemblance to a bona fide neutral investor who embarked his own funds in an enterprise without knowledge of the national character of those who controlled it.

Petitioner, although apparently conceding that enemy ownership and control are sufficient to sustain the seizure, at times suggests that there must in addition be proof of actual "utilization for economic warfare" (Br. p. 18; see pp. 11, 14, 23, 24). The Trading With the Enemy Act has,

however, never been regarded as requiring such proof; it proceeds on the belief that the barn door should be locked before, not after, the horse has been stolen. The guiding principle of all such legislation has been that—

> any property which the enemy *can* use, either by actual appropriation or by the exercise of control over its owner, or which the adherents of the enemy *have the power* of devoting to the enemy's use, is a proper subject of confiscation. [*Miller* v. *United States*, 11 Wall. 268, 306.] [Emphasis added.]

Petitioner's suggestion that the vested properties "could not have been used for the purpose of economic war" (Br. p. 3) misconceives the objective of the Trading With the Enemy Act. The production, refining and distribution of oil and gasoline (see p. 3 *supra*), are certainly not unrelated to the prosecution of modern war. But in any event, the powers of seizure under the Trading With the Enemy Act are not limited to strategic and critical materials. Congress and the Custodian have acted on the theory that property, of whatever nature, which is owned or controlled, directly or indirectly, by enemies is of potential use to the enemy; it is the purpose of the Act to deprive enemies "of the opportunity to secure advantages to themselves or to perpetrate wrongs against the United States * * * through the use of assets that happened to be in

this country." *Propper* v. *Clark*, 337 U. S. 472, 481. Property of any kind is convertible into cash and may form the basis for extension of credit. For this reason the Custodian has vested thousands of bank accounts, negotiable securities, and interests in real property and tangible or intangible personal property. See *e. g.*, Annual Report, Office of Alien Property (1948), pp. 71–78; *Swiss Insurance Co.* v. *Miller*, 267 U. S. 42, 59–60. Most such interests are relatively small, and viewed in isolation constitute far less of a threat of economic warfare than do the very substantial resources here involved. But they have been vested because in the aggregate their value is substantial and, if unvested, they might have afforded the basis for substantial realization of financial resources by the enemy.

The vested properties in suit constituted such a valuable financial resource of the enemy. The Opel parents were entitled to the income of the properties. By virtue of their absolute control over petitioner and its American subsidiaries they could dispose of the properties at will. The German government, through its physical control of the Opel parents and their allegiance to it, could have compelled them to make available to it the financial resources of petitioner and its American subsidiaries. Indicative of this is the sale of part of the assets of one of the Louisiana companies to satisfy the fine imposed upon Wilhelm von Opel. The properties were thus as fully

available to the enemy as if the entire legal ownership had been vested in Wilhelm von Opel.

Had the Opel parents owned all of the shares of petitioner outright, there could be no doubt that its American assets could properly have been vested and retained. Petitioner urges, however, that it can escape confiscation of its American assets because its shares were placed in Fritz von Opel's name, although it was understood that the Opel parents retained all the powers of control and virtually all the rights of beneficial ownership which they would have possessed had they held full legal title to the shares. Petitioner would reduce the World War II amendments to the Act and the previous decision of this Court to a mere requirement of interposing one additional link in the chain by which enemy ownership and control are exercised. Such an argument would receive short shrift in other fields of law.[30] It is entitled to no more consideration here.

In this connection it should be emphasized that this case is concerned with dealings within a family group. In the tax field transactions within an intimate family group dominated by a wealthy father have long been held to be subject to special scrutiny. *Helvering* v. *Clifford*, 309 U. S. 335; *Commissioner* v. *Tower*, 327 U. S. 280, 291. Like principles have been applied under the Trading

[30] Compare, e. g., *Hormel* v. *Helvering*, 312 U. S. 522; *Helvering* v. *Clifford*, 309 U. S. 331; *Commissioner* v. *Lamont*, 127 F. 2d 875 (C. A. 2).

with the Enemy Act. *Fujino* v. *Clark*, 71 F. Supp. 1 (D. Haw.), affirmed, 172 F. 2d 384 (C. A. 9), certiorari denied, 337 U. S. 937. In situations where the head of the family has retained less control than was the case here, he was treated, for tax purposes, as the owner of the property involved. See *e. g.*, *Helvering* v. *Horst*, 311 U. S. 112, 118; *Harrison* v. *Schaffner*, 312 U. S. 579; *Helvering* v. *Clifford*, 309 U. S. 331, 335; *Cf. Commissioner* v. *Estate of Church*, 335 U. S. 632. *Spiegel* v. *Commissioner*, 335 U. S. 701. Here, Wilhelm von Opel, like the American taxpayers in those cases and for closely parallel reasons, sought to rid himself of formal legal title in order to avoid the impact of governmental measures—the German foreign exchange laws—while keeping as many strings to his property as he possibly could. In like circumstances our courts have not hesitated to cut across the legal refinements of title and conveyancing to find ownership in the grantor who has withheld substantial enjoyment and control from his grantee. The Court of Appeals for the Second Circuit has aptly observed that while in the law of trusts "the cutting edge of the pertinent rule must be razor-sharp," in income tax law "the helpful image is rather that of a broad-sword," *Commissioner* v. *Buck*, 120 F. 2d 775, 777 (C. A. 2). *A fortiori*, the broadsword is the proper tool to use in applying the Trading With the Enemy Act, which seeks to safeguard

national interests, even more vital than those of the fisc.

III

ADDITIONAL CIRCUMSTANCES CONFIRM THE CONCLUSION THAT PETITIONER WAS AN ENEMY

In addition to the factors which have been discussed, the district court relied upon two additional elements of enemy taint. The Court of Appeals found it unnecessary to consider them, since in its opinion petitioner was clearly an enemy by reason of enemy ownership and control. While we agree that such ownership and control, without more, establish petitioner's enemy status, we believe the matters referred to clearly afford additional support for the result below.

A. *The enemy taint of Fritz von Opel*

As already indicated, the only persons asserted to have an interest in petitioner are Wilhelm and Marta von Opel and their son Fritz. Wilhelm and Marta were admittedly enemies. In addition, we also believe that any interest which Fritz von Opel owned is itself enemy tainted.

Fritz, a German by birth, acquired Liechtensteinean citizenship in a most unusual manner some time after the outbreak of World War II in Europe. It was, as he described it, a passport which he bought for $10,000 and with which he was able to "fool the English" (R. 1146). Else-

where he spoke of it as acquired for business reasons (Def. Ex. 95, R. 2295). The statutory requirement of three years' residence was waived and the additional requirement of an oath of allegiance was ignored. In fact, Fritz von Opel had never lived in Liechtenstein and knew very little about that country. Thereafter, although ostensibly a neutral citizen, he spoke of himself as a German, cheered the progress of the German armies in the war and was pleased that some of his inventions were aiding that effort (*supra*, p. 25). The district court thus properly characterized his Liechtensteinean citizenship as a "technical status" (R. 48) and a "technical form" (R. 49).

In addition, the court found that to the extent Fritz carried on activities on behalf of petitioner, he did so under the guidance and control of his father, Wilhelm von Opel (Fdg. 45, R. 59). This guidance and control rested not merely on the family relationship but, more importantly, was understood to be part of the 1931 arrangements by which Wilhelm had given Fritz whatever interest Fritz may be deemed to have had in petitioner. On the findings, Fritz was as much his father's agent as was Frankenberg. Indeed, in selling the Opel shares, Fritz acted upon power of attorney from his father; thereafter, in dealing with petitioner's affairs, he acted under powers of attorney from petitioner, signed by

Frankenberg (Def. Ex. 8, R. 1985, 2009–2010).[n] And he let the shares held formally in his name be voted by Frankenberg (see p. 37, n. 20, *supra*), a clear indication that such powers of management as he might have had were at his father's disposal.

In such circumstances it is unrealistic in the extreme to argue that such interest as Fritz may have had in petitioner is an independent neutral interest which precludes the retention of the vested assets. The interests of father and son were inseparably united, with the father unquestionably dominating the corporation. Fritz was, indeed, part of the apparatus through which his father controlled and administered petitioner.

B. *Petitioner's doing of business in Hungary*

Section 2 of the Act defines "enemy" as including any corporation incorporated outside the United States and doing business within enemy territory. The original Committee Report on this provision indicates that it was intended to

[n] While there is no suggestion that Fritz ever revolted against the "guidance and direction" of Wilhelm and Frankenberg, it may be noted that their control over him did not rest merely on his acquiescence; in addition they held the purse strings. Fritz' contractual right to 20% of dividends was valueless unless petitioner declared dividends—which Wilhelm and Frankenberg, through their practical control of the corporation, could control. In fact, petitioner's income was received not as dividends but as salary and expenses, something even more clearly within Frankenberg's control as managing director. See p. 10, n. 3, *supra*.

include within this definition a foreign corporation "having a branch or ageney actively conducting business within" an enemy country (S. Rept. No. 113, 65th Cong., 1st Sess., p. 4). It was also made clear at the time the Act was debated in Congress that the condemnation of enemy should apply even though the doing of business in enemy territory constituted only a minor part of the total business of the corporation (55 Cong. Rec. 4843).

It cannot be disputed that if petitioner, after December 13, 1941, had itself mined and shipped bauxite from Hungary, it would have been doing business in enemy territory and would have been an enemy under Section 2 of the Act. *Swiss Insurance Co.* v. *Miller*, 267 U. S. 42. Under the 1941 amendment to the Act and this Court's previous opinion in this case, the fact that a petitioner conducted such business through a wholly owned corporate subsidiary should constitute another aspect of enemy taint. This is particularly true in view of the abundance of evidence that, far from being a passive investment of petitioner, Transdanubia's activities were actively dominated and controlled by petitioner and its agents. Thus, Fritz von Opel, acting for petitioner, made numerous trips to Hungary to conduct Transdanubia's affairs and carried on a fairly extensive correspondence for Transdanubia. He likewise negotiated the contract which obligated Transdanubia to ship bauxite to Giulini

Bros. of Germany through 1942. In addition, petitioner itself guaranteed a loan to Transdanubia and repeatedly requested and secured extensions of the loan and the guarantee during the war."

In the light of these circumstances, we think that the district court properly held that the activities of petitioner's Hungarian subsidiary in enemy territory formed at least an additional ground for characterizing petitioner as an enemy.

IV

PETITIONER'S CLAIM TO PARTIAL RECOVERY IS WITHOUT SUBSTANCE

Petitioner's claim to partial recovery (Brief pp. 25-29) rests on the same mistaken assumption of facts as does its argument on lack of taint. Petitioner concedes that if it had been "subject to command and actual control by the enemy" it could recover nothing in this action (Brief p. 26). But it asserts that the entire ownership and control were in a neutral, and that the enemy's rights were limited to those created by a supposed "escrow agreement" or "mortgage" or "pledge" (Brief, pp. 26, 28, 29). Thus, in effect, it reargues the question of taint.

Upon analysis, moreover, it is apparent that what petitioner is asking for in this portion of

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[22] Presumably petitioner regards its participation in Transdanubia's affairs as a typical activity of a neutral corporation "acquired for the purpose of precluding the enemy from obtaining or utilizing its assets" (Br., p. 24).

its brief is not partial recovery but complete recovery. It urges that the entire vested property should be returned and that the Custodian should be relegated to demanding dividends during the lifetime of the Opel parents, and to exercising "such voice in the management as the law permitted." (Brief, pp. 26–27). This is to be done "without taking the assets" of petitioner (Brief, p. 10). The suggestion is purely illusory. Petitioner fails to explain how the Custodian, having surrendered all of petitioner's properties that are subject to the jurisdiction of the United States, could either compel a Swiss corporation to issue dividends to him or enforce in the Swiss courts a claim to management rights in the Swiss corporation.[33]

If it could be assumed, however, that petitioner is seeking a return of some proportionate part of the vested property, any such claim would be subject to two fatal infirmities. In the first place, no such claim was reasonably presented in the trial court. The case was tried by petitioner on an all-or-nothing theory. The complaint and the pretrial order contain no suggestion of a

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[33] In general the Swiss courts have refused to give any effect to the trading-with-the-enemy legislation of the belligerent powers and any acts taken under such legislation. See the decisions of the Swiss Supreme Court in *Guige, Déchandon, Auclair et Cie*, contre *Stromeyer* (1941), 40 BGE II, 483; *La Nationale* contre *Biermann* (1916), Revue de Droit International Privé (1917), 348; *Bachert & Cie.* contre *Zurich* (1927), 53 BGE III, 54.

claim for partial recovery.[34] Evidence was taken for 21 days, during which no suggestion of such a claim was made and no evidence bearing on such a claim offered. During the closing arguments, counsel for petitioner flatly admitted that it would lose the case if the Opel parents owned the interests which petitioner in the "Gold case" had asserted the parents owned (Tr. 2677–2678).[35] Still later, counsel for petitioner suggested for the first time that even if enemy interests were found to exist, a partial recovery could be awarded. (Tr. 2711–2712.) Judge Laws expressed great surprise at this new contention (Tr. 2711); he pointed out that in the absence of evidence concerning the divisibility of the interests he would be unable to shape a decree directing such a separation (Tr. 2951–4, 2959–61). Even at this point, petitioner neither moved to amend the pleadings nor offered additional evidence. Accordingly, the trial judge refused to consider the claim, pointing out that had a claim to such a partial recovery been seasonably made,

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[34] The amended complaint (R. 1–6) simply alleged that plaintiff had at no time been an enemy or a national of a designated enemy country and that the vested properties had at no time been "owned or controlled, directly or indirectly, in whole or in part" (R. 5, 6) by any such enemy or national. The pre-trial order (R. 10) recited that (aside from certain issues as to Transdanubia) "the only issue of fact * * * is whether the stock of the plaintiff is owned by or the plaintiff is otherwise controlled by enemy aliens."

[35] "Tr." references are to the unprinted stenographic transcript, on file with the Clerk.

the Government might well have presented "other factual information and develop legal arguments which only partially have been made in this case." (R. 51)[36]

Plainly, this ruling was within the discretion of a trial judge charged with the conduct of a lengthy and complicated trial (*Cf. E. I. Du Pont De Nemours & Co.* v. *Martin*, 174 F. 2d 602 (C. A. 6); *Moiger* v. *Johnson*, 180 F. 2d 777 (C. A. D. C.)), particularly since the ruling did not prejudice any contentions that may be made by Fritz von Opel in suits filed by him (*Fritz von Opel* v. *McGrath*, Civ. 50–70 (S. D. N. Y.); *Fritz von Opel* v. *Clark*, Civ. Action No. 1910–49 D. D. C.); *Fritz von Opel* v. *Clark*, Civ. Action No. 1923–49 (D. D. C.)).

In the second place, there is no separate neutral interest. Petitioner was beneficially owned and controlled by enemies (see pp. 31–43, *supra*). As

[36] Some of the problems to which proof of matters of fact and of foreign law, and arguments, would presumably have been addressed are these: Is the separability of the respective interests determined by the laws of the United States, the situs of the vested assets, or the laws of Germany which governed the 1931 agreement, or the laws of Switzerland where petitioner was incorporated? If the interests were separable, how, and by what law, were they to be evaluated? Could the interests of Wilhelm and Marta be measured by whatever standards might have been established for ordinary usufructuaries or would Wilhelm's complete dominance in the affairs of petitioner make these standards inappropriate? Could a decree be so fashioned as to avoid that any property returned inure to the benefit of the enemy interest?

such it was an enemy, lacking capacity under Section 9 (a) of the Act either to bring suit or to recover.[37] And petitioner concedes that partial recovery may not be awarded to a corporation which is controlled by enemies. See also the Government's brief in No. 172, *Kaufman* v. *Société Internationale, etc.* In addition, Fritz von Opel, the asserted neutral, was a neutral citizen as a matter of "technical" form only (R. 49); his roots and sympathies continued to be with Germany. He not only acceded to his father's control of petitioner; he served as his father's agent and in his father's interest in the conduct of petitioner's affairs, acting subject at all times to the directions of his father and his father's agent, Frankenberg (*supra*, pp. 13, 33). Having been a part of the enemy control of petitioner, he cannot now divorce himself from it.

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[37] Section 9 (a) provides that "any person not an enemy or ally of enemy" may file a claim and bring an action thereunder, and may recover the property to which he establishes that he is entitled.

CONCLUSION

For the foregoing reasons the judgment below should be affirmed.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General,

HAROLD I. BAYNTON,
Assistant Attorney General,

JAMES L. MORRISSON,
Special Assistant to the Attorney General,

MYRON C. BAUM,
JOSEPH LAUFER,
Attorneys.

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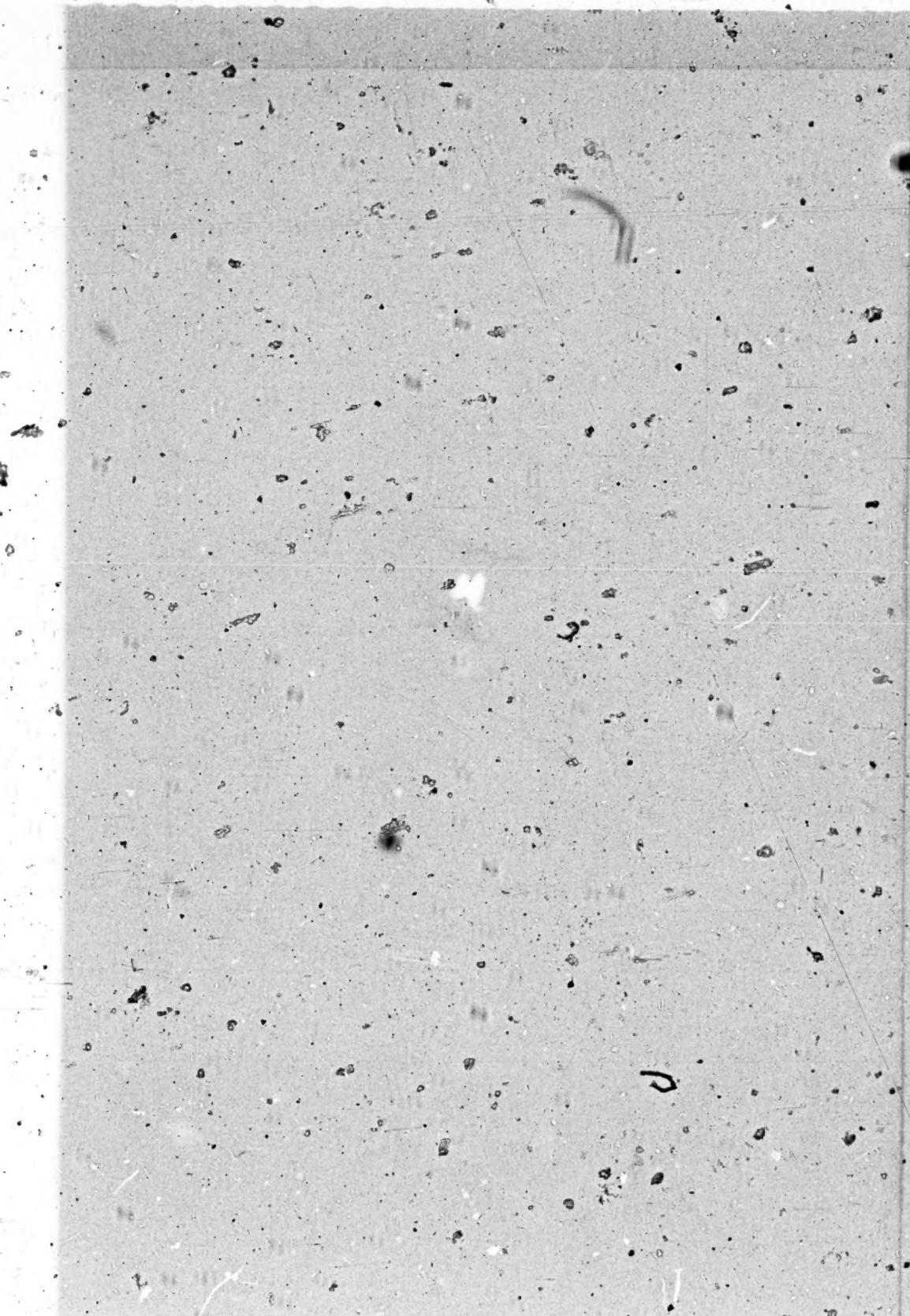
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MOTION TO TRANSFER FROM THE SUMMARY DOCKET TO THE APPELLATE DOCKET AND TO ALLOW ONE HOUR OF ARGUMENT TO EACH SIDE



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The Solicitor General, on behalf of respondent J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, respectfully moves that the above-entitled case be transferred from the summary docket to the appellate docket and that one hour of argument be allowed to each side.

1. The petition, which was granted without limitation, raises a number of contentions relating to the question whether petitioner, a neutral corporation, was enemy tainted and hence disqualified from recovering property vested pursuant to the Trading with the Enemy Act. The present case is the only one which has reached this Court after trial of the facts on questions of enemy taint. The trial was a lengthy one, resulting a record totalling over 2,000 printed pages. The evidence at the trial covered a series of transactions and relationships involving persons and properties in five different countries and extending over more than 20 years.

The various legal contentions advanced by petitioner as to the scope of the doctrine of taint are necessarily to be decided on the whole record, not on a hypothetical statement of facts (see Pet. p. 2); their decision requires consideration of the incidents of ownership possessed by and the control exercised by the enemy Opel parents over the petitioner, the relationships between those parents and their assertedly neutral son, and a variety of other circumstances. It requires an understanding, for example, of the nature and purposes of the 1931 transaction resulting in the execution of an instrument of gift from the Opel parents to their son, the legal incidents under German law of the usufruct reserved to the Opel parents by that instrument, the practical control exercised by Hans Frankenberg, as Wilhelm von Opel's agent, over

petitioner's affairs and over Fritz von Opel, and the function which all of these arrangements served for Wilhelm von Opel in view of the existing German foreign exchange regulations. Moreover, even a brief exposition of the underlying facts is rendered difficult by the circumstance that, despite the clarity and explicitness of the 56 findings of fact made by the District Court, the parties have repeatedly differed in important respects as to the interpretation of and inferences to be drawn from those findings. These differences are also reflected in petitioner's specification of 12 errors to be urged (Pet. pp. 9-10), many of which are essentially factual in nature.

A further question sought to be raised is whether, assuming petitioner to be enemy tainted, recovery can be awarded in this action of a proportionate part of the properties in suit, representing an asserted fractional interest of a neutral stockholder. This question may involve an issue which will also be presented in *Kaufman* v. *Societe Internationale, etc., and J. Howard McGrath*, No. 172. There are, however, a number of other issues on this aspect of the case which are not presented by *Kaufman*, and which in our view are decisive of this case. These include whether the District Court abused its discretion in declining to consider the claim to a fractional interest as having been suggested for the first time during the closing arguments following a lengthy trial, whether there is in this action a proper party plaintiff to present

a claim to recovery of a fractional interest; and whether on the facts of this case there is any independent neutral interest to support such a fractional recovery.

This case may have been placed on the summary docket because of an apparent similarity to the *Kaufman* case. At most, however, the two cases may have but one point in common, and that is a point which, for a number of reasons, we believe this Court need never reach in the present case. It is, moreover, a point which the District Court expressly refused to consider and which the Court of Appeals did not think it necessary even to mention until its opinion on rehearing. In the event that full argument is permitted in this case it will be the Government's intention to devote almost its entire time to those issues raised on the present record which do not duplicate issues presented by the *Kaufman* case. We believe that a full hour's argument is needed for adequate presentation of those issues.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

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